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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-15248-CII-2022 in/and
FAO-4835-2022
DATE OF ORDER:09.12.2022

The New India Assurance Company Ltd.

…..Appellant

Vs.

Jahur and Others

…..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Ajay Singla, Advocate for the appellant.

Nidhi Gupta, J.

Present appeal has been filed by the Insurance Company against Award dated 07.05.2022 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as "the Tribunal") passed in MACP Case No.33 of 2018 whereby the claim petition of the claimants/respondents No.1 and 2 herein was allowed and the appellant-Insurance Company was directed to pay compensation of Rs.13,14,894/- due to the death of the 21-year-old son of the claimants, along with interest at the rate of 9% per annum from the date of filing of the petition till actual realization.

It is submitted by the learned counsel for the appellant-Insurance Company that the Award is liable to be set aside qua the appellant or be modified inasmuch as it has been established on record that on the date of accident the driver of the offending vehicle was not having a valid and effective driving licence. It is submitted that as per the verification report Exhibit R-1, the licence-issuing authority has informed that the driving licence of respondent No.3-driver is not genuine as per the record maintained by the office of District Transport Officer, Ukhrul, Manipur. It is further submitted that this information was also provided to the learned Tribunal vide letter dated 20.04.2022 by the District Transport Officer (DTO), Ukhrul, Manipur.

A perusal of the impugned Award shows that the following four issues were framed by the learned Tribunal:-

> *"1. Whether accident resulting in death of Mustafa occurred on account of rash/negligent driving of vehicle bearing registration No.HR-58-A-7084 by respondent No.1? OPP.*
>
> *2. Whether petitioners are entitled to compensation, if so, how much? OPP.*
>
> *3. Whether offending vehicle was being driven in violation of terms and conditions of the insurance policy as alleged. If so, its effect? OPR3.*
>
> *4. Relief".*

Onus to prove issue No.3 was on the respondent-Insurance Company in support of which the aforementioned Exhibit R-1 was placed on record.

I have heard learned counsel for the appellant. I am in agreement with the reasoning and findings of the learned Tribunal recorded in regard to issue No.3. Learned counsel for the appellant is unable to controvert the fact that said verification report Exhibit R-1 cannot be relied upon as the appellant-Insurance Company did not examine any witness of the concerned authority either by summoning him through process of the Court or by getting a Commission appointed for the purpose. Clearly, the respondent-driver was given no opportunity to cross-examine and rebut this evidence produced against him. Admittedly Exhibit R-1 was received by the respondent-Insurance Company in pursuance to an application made under RTI Act and as per the law laid down by this Court in **Nirmal Kothari vs. United India Insurance Company Ltd. 2020 (4) SCC 49 and Reliance General Insurance Company Ltd. Vs. Rajpati and others decided by the Hon'ble Punjab & Haryana High Court at Chandigarh in FAO No.2744 of 2016 (O&M) and Reliance General Insurance Company Ltd. Vs. Manoj Kumar and others in FAO 2745 of 2016 (O&M)**, information taken under the RTI Act, and the verification report received by the Tribunal, cannot be considered sufficient to prove that the respondent-driver was not having a valid and effective driving licence at the relevant time. No other ground has been raised by the appellant.

Accordingly, I find no merit in this appeal and the same is hereby dismissed.

09.12.2022 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**