In the High Court of Punjab and Haryana at Chandigarh

FAO No.2529 of 1997(O&M)
Date of Decision: 02.09.2024

Oriental Insurance Co. Ltd. .....Appellant

Versus

Chandan Singh ....Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Rajive Joshi, Advocate for the appellant/Insurance Company.

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RITU TAGORE, J.

1. This is a fully burnt case. The online case status report indicates that the insurance company filed an appeal bearing FAO No.2529 of 1997 titled 'Oriental Insurance Company Ltd. Vs. Chandan Singh'.

2. As per the note of the Registry of this Court, the efforts to procure copy of the paper-book and other documents, bore no results, except for the availability of a partially burnt copy of the award dated 11.09.1996 passed by the Motor Accident Claims Tribunal, Bathinda (in short 'Tribunal').

3. Counsel for the Insurance Company submits that the issue involved in the present appeal stands finally examined and concluded by this Court in FAO Nos.427 to 431 of 1997 and placed on record copy of the said judgment.

4. As discernible from the partially burnt copy of the award dated 11.09.1996 passed by the learned Tribunal, seven claim petitions were

instituted under Section 166 of the Motor Vehicles Act, 1988, for the injuries and deaths resulting from the accident on 09.08.1992, allegedly caused by driver/respondent No.1 of offending bus bearing No.PB-03-1313, owned by respondent No.2 (as described in the award), and insured with the Oriental Insurance Company Ltd. (appellant in this appeal). The learned Tribunal, after assessing evidence, allowed the claim petitions vide award dated 11.09.1996.

5. The insurance company preferred the appeals against the above said award, which came to be decided vide FAO Nos.427 to 431 of 1997, as mentioned above. This Court in the above said appeals held as under:-

> "1. The appeals by the Insurance Company are on an issue of liability that the driver did not have a valid driving licence and that the fake character of the licence was established by examining a Clerk from the DTO's office who has evidence to the effect that the licence with the particulars given in the copy produced before the court had not been issued involving the first respondent. This evidence was given by reference to the original records.
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> 2. The second respondent-owner offered evidence through his legally constituted power of attorney. The power of attorney was also marked as Ex.R1. He had stated that at the time when the first respondent-driver was employed, he had produced the driving licence and they had also secured information that he had been employed as a driver in some trucks for about 6/7 years. The evidence was, "We had seen his driving licence also when he was employed by us in the year 1990." In the cross-examination of the Insurance Company, nothing was elicited or suggested to the witness except to state that RW1 was not present at the time of issue of licence or at the time of renewal

by the DTO office. Therefore there was no case by the insurer that the first respondent himself had no personal knowledge of the fact that he was eluding to his chief examination, namely, that they had seen the driving licence of the driver in the year 1990. It is argued by the counsel that the power of attorney cannot speak about the personal knowledge of the principal. However, in this case, if the power of attorney had given evidence for himself or on behalf of the principal and there was not even a suggestion that he had not seen the driving licence or his principal also had not seen the driving licence, it cannot be stated for the first time before this court that the witness did not have valid knowledge to speak with reference to the bona fides of the principal.

3. It is too well laid down a proposition of law that the breach of terms of policy shall be established by the insurer and the burden of proof is only on the insurer. If a witness on behalf of the owner gives evidence that he had seen the driving licence and believed it to be true, the matter must conclude there unless there is a case made of a joint fabrication of the document or a lapse on the part of the owner or his attorney to make verification of the driving licence after the insurer brought home to their knowledge that the licence was not true. This must be done before the accident and not after the accident. The nature of evidence brought before the Tribunal does not suggest that there was any willful violation of terms of policy in such a situation that the insured owner shall be entitled to indemnity in the manner laid down by the Supreme Court in ***Pepsu Road Transport Corporation Versus National Insurance Company-(2013) 10 SCC 217***. All the appeals are dismissed."

6. The learned counsel for the appellant/Insurance Company failed to present any new circumstance that would warrant a different view from

what the Coordinate bench had expressed. Therefore, this Court sees no reason to deviate from the findings recorded by the Co-ordinate Bench. Therefore, the instant appeal stands dismissed in the aforesaid terms.

7. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

SEPTEMBER 02, 2024 **(RITU TAGORE)**
d.gulati **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No