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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1664-2013 (O&M)
Reserved on : 09.01.2024
Date of decision : 16.01.2024

Oriental Insurance Company Ltd. ... Appellant(s)

Versus

Durga Khatri and Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Balkar Singh, Advocate for respondent Nos.1 to 4.

Respondent Nos.5 and 6 already proceeded against *ex parte* vide order dated 18.12.2015.

ALKA SARIN, J.

1. The present appeal has been filed by the appellant-Insurance Company challenging the award dated 19.12.2012 passed by the Motor Accident Claims Tribunal, Chandigarh to the extent that recovery rights ought to have been given to it since no driving licence had been produced by the driver and owner of the offending vehicle (respondent Nos.5 and 6 herein).

2. Since the facts, as recorded in the impugned award passed by the Tribunal are not in dispute, the same are not being reproduced herein for

the sake of brevity.

3. Learned counsel for the appellant-Insurance Company would contend that the Tribunal has wrongly held that the onus was upon the appellant-Insurance Company to prove that the driver (respondent No.5) was not holding a valid and effective driving licence. The learned counsel would further contend that the appellant-Insurance Company had taken a specific plea in its written statement that the driver (respondent No.5) was not holding a valid driving licence. Learned counsel for the appellant-Insurance Company has relied upon the judgment of this Court in the case of **New India Assurance Company Limited Vs. Akram & Anr. (FAO No.4975 of 2012 decided on 25.08.2015)** to contend that the onus was on the driver and owner of the offending vehicle (respondent Nos.5 and 6 herein) to produce a valid driving licence and in the absence of production of the driving licence, recovery rights ought to have been given to the appellant-Insurance Company against the driver and the owner (respondent Nos.5 and 6 herein).

4. The claimants (respondent Nos.1 to 4 herein) in the present case put in appearance before this Court. However, respondent Nos.5 and 6 (driver and owner of the offending vehicle) were proceeded against *ex parte* vide order dated 18.12.2015. Even today none has put in appearance on behalf of respondent Nos.5 and 6. Though the written statement was filed by the owner of the offending vehicle (respondent No.6 herein), however, the driver of the offending vehicle (respondent No.5 herein) did not file any written statement and chose not to appear before the Tribunal and he was accordingly proceeded against *ex parte.* The owner of the offending vehicle

(respondent No.6 herein) examined Sohan Singh, Assistant Record Keeper, office of the learned District and Sessions Judge, Chandigarh who brought the record of the case titled State Vs. Ram Pukar as RW-1 and thereafter closed his evidence. The appellant-Insurance Company only tendered in evidence a copy of the insurance policy as Ex.R2.

5. I have heard the learned counsel for the parties.

6. In the present case though the owner (respondent No.6 herein) had filed his written statement and examined Sohan Singh, Assistant Record Keeper, office of the learned District and Sessions Judge, Chandigarh who brought the record of the case titled State Vs. Ram Pukar as RW-1, however, he failed to produce on record a copy of the driving licence. The owner (respondent No.6) himself also failed to step into the witness box. The driving licence was not produced by the owner (respondent No.6). The Tribunal while deciding the case on issue No.3 whether the driver of the offending vehicle (respondent No.5 herein) had a valid driving licence at the time of the accident held that the onus to produce the driving licence was upon the appellant-Insurance Company and it had not led any evidence in this regard. Sections 133 and 134 of the Motor Vehicle Act, 1988 cast a duty on the owner and the driver, respectively, to give the requisite information regarding the insurance and the driving licence. In the present case the driver (respondent No.5) failed to appear and the owner (respondent No.6) though appeared failed to produce the driving licence. In view thereof, the finding of the Tribunal cannot be sustained and the same is accordingly set aside. The appellant-Insurance Company would have a right of recovery against

the driver and the owner of the offending vehicle (respondent Nos.5 and 6 herein).

7. In view of the above discussion, the present appeal stands allowed and the award passed by the Tribunal is modified to the extent stated above. Pending applications, if any, also stand disposed off.

16.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO