IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.1531 of 1998 (O&M)

National Insurance Company Limited

...Appellant

Versus

Jagtar Singh @ Billa and another

...Respondents

(2) FAO No.1532 of 1998 (O&M)

National Insurance Company Limited

...Appellant

Versus

Kuldeep Singh and another

...Respondents

(3) FAO No.1533 of 1998 (O&M)

National Insurance Company Limited

...Appellants

Versus

Gurmeet Singh and another

...Respondents

(4) FAO No.1534 of 1998 (O&M)

National Insurance Company Limited

...Appellant

Versus

Balwinder Singh and another

...Respondents

Date of Decision: April 30, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Neeraj Khanna, Advocate for the appellants.

Mr.Munish Kumar, Advocate
for respondent No.2.

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INDERJIT SINGH, J.

All the above-mentioned FAOs are taken up together being arisen from same Award and same point is involved in all the appeals.

All the above-mentioned FAOs have been filed by National Insurance Company Limited against respondents-claimants and owner-cum-driver of the offending vehicle challenging the impugned Award dated 02.03.1998 passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal') vide which ₹85,000/- to claimant Jagtar Singh, ₹22,000/- to claimant Gurmeet Singh, ₹55,000/- to claimant Balwinder Singh and ₹18,000/- to claimant Kuldeep Singh has been awarded along with interest @ 12% per annum from the date of institution of the claim petition till the realization of the amount.

Notice of motion in all the appeals have been issued and respondent No.2 appeared through counsel and contested the appeals.

Learned counsel for the appellant Insurance Company has challenged the impugned Award dated 02.03.1998 in all the appeals only on one ground that there is no Insurance Policy for the date when the accident has taken place.

As per the facts of the case, on 06.11.1994, Jagtar Singh, Gurmeet Singh, Balwinder Singh and Kuldeep Singh, claimants along with Tarlochan Singh were travelling in Maruti car No.DAC-3284. The Car was driven by Jagtar Singh on the left hand side of the road at a moderate speed and they were coming to Karnal via Assandh. At about 9.30 P.M., when they reached near village Pacca Khera chowk, a truck bearing registration No.HNH-2881 driven by driver Gian Singh (owner) in rash and negligent manner and at a higher speed, came in zig zag way and dashed into their maruti car by coming on wrong side. Due to the accident, all the occupants suffered multiple injuries and taken to Civil Hospital, Karnal.

The plea of the Insurance Company in the present case is that the offending truck bearing registration No.HNH-2881 was not insured at the time of accident. It is further stated that as per the cover note No.595895, the truck was insured from 07.11.1994 to 06.11.1995.

I have heard learned counsel for the appellant and have gone through the record.

It is admitted fact at the time of argument that payment was made by cheque on 04.11.1994 and the cover note was issued on 04.11.1994 but w.e.f. 07.11.1994 to 06.11.1995. There is no dispute between the parties regarding this fact. The only legal point is when the payment was made on 04.11.1994 and the cover note was also issued on that very day, whether the Insurance Company can disown its liability to future date. The accident had taken place after issuance of the cover note. No cogent evidence on record has been led by the Insurance Company as to why the cover note was issued w.e.f from the future date i.e. 07.11.1994, especially when they have received the cheque on 04.11.1994. It is not disputed fact that payment can be made through cheque and it is a valid payment.

Learned counsel for the appellant cited judgment passed by the Hon'ble Supreme Court in ***M/s National Insurance Co. Ltd.***

vs. Smt.Jijubhai Nathuji Dabhi and others, 1997(2) PLR 703. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case the payment of renewal premium was paid on 25.10.1983 and not within the renewal date i.e. 14.10.1983. The Insurance Policy is suspended from 14.10.1983 (4.00 P.M.) to 24.10.1983. It is declared and agreed that the cover under this policy is reinstated and renewed for a further period of twelve months from 25.10.1983 to 24.10.1984. As in that case, the premium was paid on 25.10.1983 and accident took place earlier on 25.10.1983 at 11.14 A.M. and contract of renewal had come into force on 25.10.1983 at 4.00 P.M., therefore, in these circumstances, it was held that there was no insurance at the time of accident and Insurance Company is not liable, which are not the facts of the present case.

Learned counsel for the appellant has further placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Sobina Lakai and others, 2007(4) PLR 614***. I have also gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case at the time, when the accident had occurred at 9.15 A.M. on 20.07.1994, the respondent did not have the insurance cover. The insurance policy was obtained at 2 P.M. on 20.07.1994, which is clearly evident from the motor renewal endorsement but in the case in hand, the premium was paid and cover note was issued much earlier to the accident.

On the other hand, learned counsel for respondent No.2 cited judgment passed by the Hon'ble Supreme Court in ***Oriental Insurance Co. Ltd. vs. Dharam Chand, 2011(1) PLR 76***. In that case, the premium cheque for insurance policy was received at 4.00 P.M. on 07.05.1998 and cover note was issued at the same time. In columns Nos.3 and 4 of the cover note, however, it was stated that the insurance would commence from 08.05.1998 and expire on 07.05.1999. The motor accident in regard to which the claim case was filed, took place at 8.30 P.M. on 07.05.1998. The Insurance Company sought to disown its liability on the plea that accident took place before the commencement of the insurance as indicated in the cover note. When the appeal was taken up for hearing, learned counsel for the Insurance Company very fairly stated that since the cheque for the premium amount was received by the company at 4.00 P.M. on 07.05.1998, the Insurance must be deemed to have commenced from that time and four hours later when the vehicle met with the accident, the owner must be deemed to have been covered by the insurance policy. The Hon'ble Supreme Court held that they appreciate the fairness shown by the counsel and the appeal was dismissed. I have gone through this cited judgment and the same having similar facts to the case in hand, fully applies in the present case.

In view of the above discussion, I find that the Insurance Company is liable to pay the compensation to the claimants as the Insurance Company had received the premium by cheque on 04.11.1994 whereas the accident took place afterwards and the

Insurance Company cannot avoid its liability. The findings given by the Tribunal are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in all the FAOs, the same are dismissed.

April 08, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**