IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4022 of 2004
Date of Decision:- 21.08.2015

National Insurance Company Ltd.

.....Appellant

Versus

Slochana Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. **Whether Reporters of local papers may be allowed to see the judgment? Yes**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest? Yes**

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

Mr. G.S. Sullar, Advocate
for respondent No.4.

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SHEKHER DHAWAN, J.

Present appeal filed by appellant-Insurance Company against Award dated 01.06.2004, passed by Motor Accident Claims Tribunal, Chandigarh (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' awarded compensation of ₹1,52,000/- on account of death of Sandeep Kumar. Liability to make the payment of compensation was fastened upon respondent No.3-Insurance Company, who is appellant before this Court.

2. Taking the case from undisputed facts that claimants are

parents of Sandeep Kumar (since deceased). On 21.10.2002, the car bearing trade certificate No.CH-02-TC-000103 (old No.CH-01-TC-66) was being driven by respondent No.1-Mrs. Shashi and hit their son. As a result of that, he sustained injuries. He was shifted to Government Medical College & Hospital, Sector 32, Chandigarh, where he died because of injuries. Claimants took the plea that accident had taken place because of rash and negligent driving of respondent No.1 and all the three respondents being driver, registered owner, insurer of the vehicle are jointly and severally liable to make the payment of compensation on account of death of their son.

3. Respondent No.1 admitted the factum of accident but took the plea that accident had taken place because of negligent driving of deceased-Sandeep Kumar. Respondent No.2 denied the factum of accident for want of knowledge and also took the plea that offending vehicle was insured with respondent No.3 and liability to pay the compensation, if any, is of respondent No.3. Respondent No.3-Insurance Company denied the factum of accident and took the plea that claim petition was filed in cullusion with respondent Nos.1 and 2. Otherwise also, the accident had not taken place because of the fault of offending vehicle. Otherwise, on the date of accident, respondent No.2 was not holding a valid trade certificate. The offending vehcile was being plied in violation of the terms of the insurance policy. 'The Tribunal' after pleadings of the parties framed following issues: -

> *"1. Whether Sandeep Kumar deceased died in a motor vehicular accident as alleged in the petition? OPP.*

> 2. *If issue No.1 is proved whether the claimants are entitled to compensation? If so, how much and from whom?OPP.*
>
> 2A. *Whether the present petition has been filed by the claimants in collusion with the respondents No.1 & 2? OPR.*
>
> 2B. *Whether respondent No.2 has violated the terms of and condition of insurance policy in view of the contentions raised in para No.10 of the written statement?*
>
> 2C. *Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR.*
>
> 3. *Relief."*

4. 'The Tribunal' after appreciating the evidence, returned the findings that accident had taken place because of rash and negligent driving of respondent No.1 and claimants entitled to receive a sum of ₹1,52,000/- on account of compensation on account of death of their son Sandeep Kumar. Liability to pay the claim of compensation was fastened upon respondent No.3 and appellant-insurance Company is in appeal before this Court.

5. At the time of arguments, learned counsel for the appellant-Insurance Company took the plea that offending vehicle was a new vehicle and same was being plied with 'Trade Certificate' only. The said trade certificate was valid till 31.03.2002, whereas the accident had taken place on 21.10.2002. Insurance policy was valid from 22.01.2002 till 21.01.2003. On the date of accident i.e. 21.10.2002, the date of trade certificate was not valid. 'The Tribunal' took the erroneous view that there was no condition of any violation of insurance policy. Learned counsel for appellant-Insurance Company also took the plea that as per Indian Motor Tarriff Rules, governing the terms and conditions of insurance policy, all trade certificates are to be disclosed by the dealer.

As per Ex.R-8, insurance was for trade policy, comprehensive and if no valid trade certificate on the date of accident, then Insurance Policy does not cover the liability of insurance company.

6. While arguing on this point learned counsel for respondent No.4 took the plea that trade certificate was duly renewed on the date of accident. All the four trade certificates were issued. One was with National Insurance and three other were with United India Insurance Company. So, the appeal is without any merit and same be dismissed.

7. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that undisputedly insurance was valid from 22.01.2002 till 21.01.2003 and there was valid insurance on the date of accident i.e. 21.10.2002. The real controversy is on the point, whether trade certificate No.CH-01-TC-66 had actually expired on 31.03.2002 and this fact had come in the statement of RW-2 itself that M/s Anbros Motors Pvt. Ltd. got issued four trade certificates from Registrating Authority but the same were not disclosed to the appellant-Iinsurance Company. More so, as per Rule No.4 of Indian Motor Tarrif Rules, all trade certificates were required to be declared by the insured. For ready reference, the relevant rule is being reproduced as under: -

> *"All trade certificates in possession of OR all drivers employee by the insured for his trade must be declared for insurance."*

8. 'The Tribunal' has completely ignored this fact while fastening the liability on appellant-Insurance Company, whereas the liability to pay the amount of insurance company in this case is of M/s

Anbros Motors Pvt. Ltd.-respondent No.4 and the present appeal filed by appellant-Insurance Company is accepted. Award dated 01.06.2004 passed by 'The Tribunal' is modified to the extent the liability to pay the amount of compensation along with interest shall be of M/s Anbros Motors Pvt. Ltd.-respondent No.4.

9. Resultantly, the appeal filed by the appellant-Insurance Company is accepted.

(SHEKHER DHAWAN)
August 21, 2015 JUDGE
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