IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.2000 of 2013 (O&M).
Date of Decision: 09.12.2015.

Sanjay and another ....Appellants.

VERSUS

IFFCO TOKIO General Insurance Company Ltd. and others

....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Surinder Gaur, Advocate for the appellants.

Mr. M.B. Jain, Advocate for respondent No.1.

Mr. S.K. Bishnoi, Advocate for respondents No.2,3 and 4.

Mr. Sansar Kundu, Advocate for respondents No.5 and 6.

Ms. Kaavya Jariyal, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.7.

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SNEH PRASHAR, J.

A petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation on account of death of one Satish due to the injuries sustained by him in a vehicular accident was filed by his widow and parents. The award dated 08.11.2012 was passed by learned Motor Accident Claims Tribunal, Jind (hereinafter referred to as, “the tribunal”) in MACT Case No.86 of 2012 by virtue of which an amount of Rs.7,78,000/- along with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization was awarded holding the appellants (respondents No.1 and 2 in the claim petition) liable for payment of the awarded amount, being driver-cum-registered owner and owner of vehicle Tata ACE bearing registration No.HR-56-6895 (hereinafter referred to as, “the offending vehicle”). Respondent No.3-insurance company was exonerated of its liability to indemnify the insured on the ground that the offending vehicle was being plied in utter violation of the terms and conditions of the insurance policy.

Feeling aggrieved by the award dated 08.11.2012 the appellants have preferred the instant appeal.

The submissions made by Mr. Surinder Gaur, learned counsel representing the appellants, Mr. M.B. Jain, learned counsel representing respondent No.1, Mr. S.K. Bishnoi, learned counsel representing respondents No.2,3 and 4, Mr. Sansar Kundu, learned counsel representing respondents No.5 and 6 and Ms. Kaavya Jariyal, learned counsel appearing for Mr. T.K. Joshi, learned counsel representing respondent No.7 have been heard and record perused.

At the very outset, learned counsel for the appellants argued that it was not denied by respondent No.1-insurance company that the offending vehicle was insured with the said company vide cover note Ex.R3 according to which the insurance premium was received by the insurance company on 27.02.2012 for issuance of the insurance certificate w.e.f. 18.03.2012. As mentioned in Ex.R3, the offending vehicle was insured for the period 19.03.2012 to 18.03.2013. The accident took place on 19.03.2012 when the insurance policy was valid. The two grounds on which the insurance company has been absolved of its liability are (i) that the fitness certificate Ex.R8 of the offending vehicle had expired on 24.02.2011 and the same had not been got validly renewed; (ii) that the driver-appellant no.1 of the offending vehicle was driving the vehicle under the influence of alcohol at the time of accident.

Learned counsel for the appellants asserted that no reason could be explained by the respondent No.1-insurance company for having accepted the premium on 27.02.2012 in case the offending vehicle was having no fitness certificate. The fitness certificate had expired before the premium was collected and therefore the insurance company cannot now turn around and say that it was not liable because of expiry of the fitness certificate. Learned counsel further contended that the medical report Mark-RA of appellant No.1 had not been proved in due process of law by examining the concerned medical officer. Otherwise also, it could not be said to be conclusively proved that appellant No.1 had consumed alcohol and was under its influence when admittedly his urine and blood test was not carried out. In such circumstances, when it cannot be definitely stated that the appellant was drunk at the time of accident, the insurance company cannot be absolved of its liability to indemnify the insured and from payment of the compensation awarded to the claimants.

To support his arguments, learned counsel relied upon ***Bachubhai Hassanalli Karyani vs. State of Maharashtra, 1971(3) S.C.C. 930*** wherein it was held that drunkenness cannot be said to be conclusively proved unless urine or blood test is carried out. Mere smelling of alcohol, unsteady gait, dilation of pupils and incoherence in speech are not sufficient for holding a person having drunk and under the influence of alcohol. Reliance has also been placed on ***Rangappa vs. Jayaramaiah and another, 2014 AAC 1246.*** In this case, the fitness certificate of the offending vehicle had expired prior to the date of insurance. It was held that the insurance company should not have insured the vehicle for the period during which vehicle did not possess the fitness certificate. If it does so and collects the premium, it cannot take the plea when it comes to liability that there liability is subject to the vehicle possessing fitness certificate.

On the other hand, learned counsel for respondent No.1-insurance company relying on proposition laid in ***Thara vs. Syamala, 2009 A.C.J. 2440*** submitted that a goods carriage can be used on the road only after obtaining a permit and fitness certificate. The use of the vehicle without fitness certificate will entitle the insurance company to avoid its liability under the policy.

The case in hand has peculiar facts but quite identical to the facts in ***Rangappa's*** case (supra). Admittedly, the fitness certificate Ex.R8 of the offending vehicle had expired on 24.02.2011 and the same had not been got validly renewed thereafter. The insurance policy Ex.R6 was issued for the period 18.03.2012 to 17.03.2013. On the date the insurance policy was issued, the vehicle was not having a fitness certificate. The accident occurred on 19.03.2012. The cover note was issued on 18.03.2012 for being effective w.e.f. 19.03.2012. In other words, almost on the date the insurance cover note became effective, the accident had taken place. From the above, it is clear that on the date of issuance of insurance cover note/policy, the vehicle was not having a fitness certificate. When the insurance company had insured the offending vehicle having no fitness certificate, it cannot now turn around and say that it was not liable for payment of compensation because the vehicle did not possess a fitness certificate. Needless to say that at the time of insuring a vehicle and issuing a policy or renewing such policy, it is the duty of the insurer to verify whether the vehicle possessed all necessary certificates including the fitness certificate. If the insurer insures a vehicle having no fitness certificate, it cannot later plead that it is not liable because the vehicle was not having a fitness certificate.

In any case, the offending vehicle was not having fitness certificate, was not the only ground on which learned tribunal held respondent No.1-insurance company not liable to pay the compensation amount. The other ground on which the insurance company was absolved of liability was that appellant No.1-driver who was none else but driver-cum-registered owner of the offending vehicle had consumed alcohol and was under its effect at the time of accident in question. Dr. Rajesh Gandhi, Medical Officer, General Hospital, Jind (RW4) proved the medical examination report Mark-RA made by Dr. Dinesh Ranga on the application Ex.R2 of the police. The medical report Mark-RA is to the effect that appellant No.1-Sanjay was smelling of alcohol. He could not walk in straight line and was under the effect of alcohol. It is also mentioned in the report that appellant No.1-Sanjay had refused to give blood and urine sample.

Appellant No.1-Sanjay did not dare to appear in the witness box to controvert the said allegation/ medical report Mark-RA. It is important to note that RW4 Dr. Rajesh Gandhi had identified the handwriting and signature of Dr. Dinesh Ranga on the report Mark-RA and had also stated that Dr. Dinesh Ranga had examined Sanjay during the discharge of his official duties. In the said set of facts, there is no reason why the report Mark-RA should not be believed and taken into consideration. When the appellant No.1-Sanjay had refused to give urine and blood sample for test and he intentionally did not appear to make a deposition on oath to deny the said allegation, there remains no doubt that he had consumed alcohol and was under the influence of the same at the time of accident. The appellants cannot wriggle out of this breach of the insurance policy because appellant No.1-Sanjay himself beside being the driver was also registered owner of the offending vehicle. As per terms and conditions of the insurance policy the insurer is not liable to make any payment in respect of any accidental loss or damage suffered if the injured or any person driving the vehicle with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs.

Since the insured committed violation of terms and conditions of the insurance policy, learned tribunal rightly absolved the insurance company of the liability to indemnify the insured. Accordingly, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

09.12.2015.
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