IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2886-2013 (O&M)

Date of Decision: June 30, 2015

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Smt. Bindu and others

…Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Tajender K. Joshi, Advocate,
for the appellant.

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

NARESH KUMAR SANGHI, J (Oral)

CM-12974-CII-2013:

Prayer in this civil miscellaneous application is for condoning the delay of 130 days in filing the appeal.

After hearing learned counsel for the appellant and going through the contents of the application, which is duly supported by an affidavit, delay of 130 days in filing the appeal is condoned. Civil miscellaneous application stands disposed of.

FAO-2886-2013:

Present appeal alongwith an application for condonation of delay of 130 days in filing of the appeal came up for hearing before the Co-ordinate Bench on 29.5.2013 and notice of the application for condonation of delay was issued for 24.9.2013. Since the notices issued to the non-applicant/respondents were not received back served or otherwise, therefore, the matter was adjourned to 28.3.2014, vide order dated 24.9.2013, for service of the respondents. On the adjourned date, i.e. 28.3.2014, the following order was passed by the Co-ordinate Bench:-

> *" Respondents 1 to 5 not served since it is reported that there is no such village as given in the summons. Respondents 6 and 7 are also not being residing at the given address.*
>
> *Appellant to furnish the correct details of address of the respondents in the Registry in a week's time, failing which, the appeal against the respondents shall stand dismissed.*
>
> *Issue fresh notice to the respondents, after the needful is done, for hearing on 27.10.2014."*

On 27.10.2014, the following order was passed by the Co-ordinate Bench:-

> " Notice to respondents could not be issued as counsel for the appellant failed to comply with order dated 28.3.2014.
>
> Another opportunity is provided to do the needful within two weeks failing which the appeal against respondents shall be deemed to be dismissed.
>
> Adjourned to 16.2.2015."

The office report reveals that fresh notices to the respondents could not be issued since the appellant-insurance company had failed to furnish their correct addresses.

Learned counsel for the appellant submitted that no other addresses of the respondents except as mentioned in the Memo of Parties, were available with the appellant and, hence, the orders dated 28.3.2014 and 27.10.2014 could not be complied with. He further submitted that the appeal be heard and decided on merits.

Though as per order dated 27.10.2014 (reproduced supra), the present appeal should be deemed to be dismissed, but to part justice, learned counsel for the appellant-insurance company has been heard on merits.

The present appeal has been filed by Shri Ram General Insurance Company Limited, challenging the award dated 15.10.2012, passed by learned Motor Accidents Claims Tribunal, Gurgaon (for brevity, 'the Tribunal'), whereby a sum of

Rs.5,49,200/- (Rupees five lacs, forty-nine thousand and two hundred) alongwith interest @ 6% per annum from the date of presentation of the petition till realization of the awarded amount was passed in favour of the claimant/respondents. It was further directed that the appellant-insurance company shall pay the compensation and thereafter recover the same from Hakim Deen and Wahid Khan, driver and owner respectively of the offending vehicle, bearing Registration No. RJ-02-GA-0510.

Learned counsel for the appellant has raised the only argument that once it was proved that the offending vehicle bearing Registration No. RJ-02-GA-0510 was not granted a valid permit to drive the same at Bilaspur Khurd, District Gurgaon (Haryana) on 30.5.2010 and, hence, the appellant-insurance company was not liable to indemnify the owner of the offending vehicle. It was also submitted that the appellant-insurance company cannot be directed to first pay the compensation to the claimant/respondents and thereafter recover the same from the driver and registered owner of the offending vehicle.

After hearing learned counsel for the appellant, this Court finds that the issue raised by learned counsel for the appellant is no longer *res integra*. The said issue came up for consideration before Hon'ble the Supreme Court and a reference was sent to a larger Bench in the matter of **National Insurance Company Limited v. Parvathneni and another (SLP (Civil) No. 22444 of 2009).** The said reference was declined while the question of law was kept open by a 3-Judge Bench of Hon'ble the Supreme Court vide order dated 17.9.2013.

When confronted with the above case law, learned counsel for the appellant could not cite any other law in his favour.

There is no dispute with regard to the death of Vimal, aged about 35 years, in a motor vehicular accident. Even the amount awarded to the claimant/respondents has not been disputed before this Court. The present appeal has been filed mainly on the issue that there was no valid permit to drive the offending vehicle in the State of Haryana on 30.5.2010 and, as such, the appellant-insurance company could not be saddled with the liability to first pay the amount of compensation and thereafter recover it from the driver and owner of the offending vehicle.

Similar issue was referred to the larger Bench of Hon'ble the Supreme Court in the matter of **Parvathneni and another (supra)**. While disposing of the said matter on 17.9.2013, Hon'ble the Supreme Court kept the issue open.

In the matters of **Pepsu Road Transport Corporation v. National Insurance Company, 2013 (4) R.C.R. (Civil) 273;**

Jawahar Singh v. Bala Jain and others, 2011 ACJ 1677; **The New India Insurance Company v. Darshna Devi and others, 2008 (2) R.C.R. (Civil) 86**; **Oriental Insurance Co. Ltd. v. Zaharulnisha and others, 2008 (4) ACC 781**; and **New India Assurance Co. Ltd. and others v. Dyal Singh and others, 2012 ACJ 1091**, Hon'ble Courts have held that even if it is found that the driver was holding a fake or invalid driving licence, in that eventuality the insurer of the offending vehicle can be directed to satisfy the award and thereafter recover the same from the driver and owner of the offending vehicle.

In the matters of **ICICI Lombard General Insurance Co. Ltd., Mumbai v. Ram Kumar, 2014 ACJ 160** and **Shanta Kumari v. Maratu Devi and others, 2015 (1) ACC 574**, it was held that if there was breach of the condition of the insurance policy with regard to the route permit of the offending vehicle, in that eventuality the insurance company cannot be saddled with the liability to pay the compensation, but the insurance company can be directed to pay the compensation to the claimants and recover the same from the owner of the offending vehicle.

The case in hand is squarely covered with the above said principle laid down by various Hon'ble Courts.

Learned Tribunal has accorded cogent reasons while directing the appellant-insurance company to first pay the amount of compensation to the claimants and then recover the same from the driver and owner of the offending vehicle.

In view of above, there is no force in the present appeal and the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

June 30, 2015
Pkapoor