In the High Court of Punjab and Haryana at Chandigarh

......

F.A.O. No.3885 of 2015 (O&M)

.....

Date of decision:3.7.2015

Dhruv Kumar

.....Appellant

v.

Sandeep and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. M.S. Sidhu, Advocate the appellant.

.....

Inderjit Singh, J.

This appeal has been filed by Dhruv Kumar-appellant (owner of TATA 407 vehicle) against Sandeep and Neelam (claimants), Future General Insurance Company Limited-contesting respondent and Shammi-Driver (proforma respondent) challenging the award dated 16.1.2014 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as `the Tribunal'), vide which the claim petition filed by Sandeep and Neelam-claimants has been partly accepted and an award of ₹2,75,000/- as compensation to be paid solely by respondent No.2-Dhruv Kumar along with interest @7.5% per annum from the date of claim petition till actual payment has been passed in favour of the claimants.

The brief facts of the case are that Sandeep son of Om Parkash and Neelam wife of Sandeep filed the claim petition under Sections 166 and 140 of the Motor Vehicles Act against Shammi-Driver, Dhruv Kumar-Owner and Future General Insurance Company Limited-insurer of the TATA 407 vehicle bearing registration No.HR-45A-5126 (hereinafter referred to as `the offending vehicle') claiming compensation from the respondents on account of death of their son Chirag, who died in a motor vehicular accident on 1.10.2011 at about 4.30/5.00 p.m. in the street outside the house due to rash and negligent driving of the offending vehicle by Shammi-respondent No.1 . The FIR was also registered against respondent No.1. The claimants are the parents of the deceased child.

At the time of death, Chirag (since deceased) was of 1½ years of age and the claimants claimed ₹10 Lacs as compensation.

On notice, respondent No.1 filed his written statement and denied the accident in question and it was submitted that a false case had been got registered against respondent No.1 only to grab the amount of compensation from the respondents. The vehicle in question was stated to be insured with respondent No.3. Respondent No.2 had not filed any written statement and adopted the written statement filed by respondent No.1. Respondent No.3-Insurance Company took a specific preliminary objection that the offending vehicle was not insured with the Insurance Company. As per the record of the answering respondent cover note No.A7023610 was a missing cover note and the notice in regard was duly given in Newspaper named “Harbhoomi” published on 29.12.2010 notifying the factum of cover note being missing and DDR to the effect was lodged on 29.10.2010 in Police Station, Jhajjar. The Insurance Company took a specific plea that the alleged cover note was neither issued by the Insurance Company nor by any other person authorized to issue the same. This cover note is forged document.

The Tribunal after discussing the evidence held the owner of the offending vehicle only liable to pay the compensation amount of ₹2,75,000/- and the Insurance Company was not held liable and gave the specific finding that the cover note in question was not issued by the Insurance Company. Aggrieved from this award, the owner filed the appeal.

At the time of arguments, learned counsel for the appellant did not question the quantum of compensation awarded by the Tribunal. He only argued that the Insurance Company is liable to pay the compensation amount as the vehicle was duly insured.

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

From the record, I find that there is specific plea of the Insurance Company in the written statement that the cover note was missing and it was duly notified to general public on 29.12.2010 and DDR on the same date has also been got registered in the Police Station, Jhajjar. This accident had taken place on 1.10.2011 almost after one year of recording the DDR regarding missing of this cover note. The respondent-Insurance Company has examined Gaurav Prashar, Senior Executive(Legal) as RW-1, who deposed regarding all these facts.

On the other hand, the owner had not come to the witness box to tell from whom he got issued this cover note. No oral evidence has been led regarding this cover note in question. There is no evidence on the record to show the payment to the Insurance Company for issuing this cover note. Neither any Insurance Policy issued by the Insurance Company has been placed on record nor any complaint/letter has been written to the Insurance Company for not issuing the Insurance Policy. RW-1 has produced the record and has specifically deposed that this Insurance Policy was not issued by the Insurance Company. Even the respondent-owner is not telling the name from whom he got issued this cover note.

Keeping in view the evidence on the record, I find that the findings of the learned Tribunal are correct and as per law and do not require any interference from this Court and the same are upheld.

Therefore, from the above, finding no merit in the appeal, the same is dismissed.

July 3, 2015. **(Inderjit Singh)**
Judge

hsp