IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.8558 of 2015 (O&M)
Date of Decision: 08.08.2016

RELIANCE GENERAL INSURANCE COMPANY LTD.
......Petitioner

Vs

ANKUSH DHINGRA AND ANR. ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sanjeev Kodan, Advocate
for the petitioner.

Mr. D.S. Dadwal, Advocate for
Ms. Abha Rathore, Advocate
for respondent No.1

Mr. A.S. Khara, Advocate
for respondent No.2.

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RAJ MOHAN SINGH, J.

[1]. This revision petition has been filed by the petitioner-Reliance General Insurance Company Ltd. against the orders dated 23.11.2015 (Annexure P-7) and 07.12.2015 (Annexure P-9) passed by Motor Accident Claims Tribunal, Panchkula (hereinafter to be referred as 'the Tribunal). Vide order dated 23.11.2015, the evidence of the petitioner was closed by order of the Court and by order dated 07.12.2015, application for leading additional evidence was declined by the Tribunal.

[2]. Claimant-respondent No.1 filed a petition under Section

166 of the Motor Vehicles Act, 1988 for grant of compensation against the petitioner and respondent No.2 on the ground that on 14.02.2013, the claimant had gone to Manimajra on business tour on his Activa scooter. His brother accompanied him, who was on his motorcycle. After the work both started for their home on their respective vehicles. When the claimant reached Sector 11-15 Chowk near Sector 14 market, Panchkula, respondent No.1 suddenly appeared from wrong side on her scooter which was being driven rashly and negligently by jumping over the divider. A collusion took place, resulting in injuries to the claimant. The injured was taken to hospital and was provided medical aid. The claimant received multiple injuries and was taken to Alchemist Hospital, Sector 21 Panchkula, where CT scan was done and injuries were found to be serious. Thereafter claimant was taken to Fortis Hospital, Mohali, where he remained admitted for ten days. The claimant prayed for grant of compensation to the tune of Rs.20 lacs.

[3]. The petitioner being respondent No.2 contested the claim of the claimant on the ground that the Scooter No.HR03-H-8217 was not insured with the Insurance Company. The respondent No.1 placed the insurance policy certificate on record showing that the insurance policy was valid w.e.f. 12.01.2013 to 11.01.2014 pertaining to scooter bearing

No.HR03-H-8217. The stand of the Insurance Company was that the vehicle was never insured with the Insurance Company. The petitioner-Company moved an application for deletion of its name from the array of parties.

[4]. The evidence of the claimant was concluded on 24.09.2015 by the Tribunal and thereafter the case was fixed for respondents' evidence. On 24.09.2015, the case was adjourned for 13.10.2015. No evidence of the respondents was present on that day. On the request of respondents, the case was adjourned to 03.11.2015 for the entire evidence of the respondents at their own responsibility. It was observed that process of the court shall not be granted, if process fee and diet money were not filed within three days. *Dasti* summons were ordered to be given, if desired by the parties. Service or non-service of the witnesses would not be treated as a ground for adjournment. Evidence in the form of affidavit of the witnesses were required to be submitted three days prior to the date with an advance copy to the counsel opposite.

[5]. On 03.11.2015, one witness was present and was recorded by the Commissioner. No other witness of the respondents was present, nor was served as no list of witnesses was moved. Last opportunity was granted to the

respondents and the case was adjourned for 23.11.2015. On 23.11.2015, the evidence of the respondents was closed as no witness was summoned.

[6]. The petitioner-Company filed an application for leading additional evidence on the ground that on 23.11.2015, the case was fixed for respondents' evidence, but due to call of Bar Council of India, the counsel for respondent No.2 could not appear and examine the witnesses due to suspension of work by the Lawyers. The insurance policy Ex.R-3 tendered by respondent No.1 was claimed to be fake and forged document as the same was never issued by the Company. The petitioner wanted to examine official from the Insurance Company to prove that the said document was fake and fabricated document. The application filed by the petitioner was declined by the Tribunal vide order dated 07.12.2015, primarily on the ground that the Insurance Company was in the knowledge of its defence from the very beginning and after closing of the evidence such a device was intended to delay the disposal of the case. The prayer of the petitioner for leading additional evidence was declined as it was observed that the evidence was affirmative in nature and required to be led at proper stage.

[7]. First of all, the stand taken by the petitioner/respondent

was to be appreciated in the light of the document available on record as Annexure P-10/Ex.R-3. This document was claimed to be forged and was not issued by the petitioner-Company having its head office at Mumbai. Even if, the petition has been filed by the Company through its Manager/Authorised Signatory of Chandigarh, but the petitioner has verified the details of alleged policy for the relevant period in the name of Meera Bakshi and vehicle No.HR03-H-8217. The stand of the petitioner was that the said policy was never issued by the Company. The nomenclature of the petitioner with the address of Chandigarh viz-a-viz. its address of Mumbai as given in the claim petition has necessary explanation to the fact that the petitioner-Insurance Company has verified the genuineness of the insurance policy and the offending vehicle from its head office at Mumbai. No such controversy can be appreciated on this premise at present.

[8]. The evidence of the defendants virtually started from 13.10.2015 and it lasted for three dates including the last opportunity on 03.11.2015. I am of the considered view that once the stand of the Insurance Company was of denial, the Tribunal should have afforded reasonable opportunity to the petitioner-Company to establish the factum of fake and forged document on record. The procedural vagrancies should not be

invoked to thwart the cause of justice at the altar of technicalities.

[9]. In considered opinion of this Court, the petitioner Company deserved to be granted opportunity to prove its case, because, if the insurance policy was not issued by the petitioner-Company, then it amounts to fraud. Since fraud vitiates all solemn acts, therefore, the alleged fact has to be demonstrated and proved on record by giving adequate opportunity to the petitioner-Company. It is a settled proposition of law that even, if something remains obscure, it can be filled by way of additional document. The Court becomes *functus officio* only after pronouncement of judgment. The evidence which goes to the root of the case, requires to be produced, if the Court is satisfied that such an evidence would advance the cause of justice and would be necessary for just and proper decision of the case. In my considered view, if the insurance policy is ultimately found to be fake on proper verification and evidence led by the petitioner-Company, that would ultimately tilt the decision of the case.

[10]. In view of aforesaid, the knowledge and due diligence would not come in the way of advancing true justice when the Court is satisfied that the evidence would definitely clinch the

issue and would be a necessary piece of evidence for deciding the controversy in its right perspective. There may be possibility that someone may be involved in such type of racket of issuing fake insurance policy in the petitioner-Company. Even, in larger interest of all concerned, such an episode is required to be gone into by way of scrutiny at the instance of the petitioner-Company. If the policy is ultimately found to be forged, the necessary penal consequences would follow and the guilty may be brought to book.

[11]. In any case, this petition deserves to be accepted. The orders dated 23.11.2015 and 07.12.2015 are hereby set aside. Application for leading additional evidence is allowed, subject to cost of Rs.10,000/- to be paid to respondent No.1-claimant. The Tribunal would grant effective opportunity to the petitioner-Company to lead its evidence, however payment of cost would be a condition precedent for such an indulgence.

[12]. This revision petition is allowed in the aforesaid terms.

August 08, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No