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In the High Court of Punjab and Haryana at Chandigarh

FAO No.1362 of 1995
Date of Decision:03.08.2016

National Insurance Co. Ltd.

...Appellant

Versus

Jasbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Lalit Garg, Advocate,
for respondent No.6.

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RAJ MOHAN SINGH (Oral)

This is an appeal by the Insurance Company against the award dated 04.03.1995, passed by the Motor Accidents Claims Tribunal, Hoshiarpur, whereby claim petition filed by the claimant Jasbir Singh was accepted. Though, a total compensation including the loss of income was assessed as ₹4,20,000/- but the claimant himself was sitting with an arm resting on the window of the bus and thereafter he had suffered injuries. The Tribunal held that the injured himself contributed to the loss on account of his mistake and as such he was held entitled to the claim of ₹2,80,000/- as compensation due to pain and sufferings, medical treatment and loss of income. The liability was fastened upon the appellants and respondents No.3, 4 and 6.

Respondents No.3 and 4 were proceeded against ex parte vide order dated 24.09.2015 passed by this Court. The case of the claimant was that the accident in question took place on 12.07.1992 at about 09:00 a.m. when the claimant along with his maternal uncle Ram Lal and maternal Aunty Smt. Satya Devi were travelling in bus No.PAB 5067 owned by respondent No.2. When the bus reached in the area of Nangal Shahidan on Hoshiarpur-Chandigarh Road, the offending truck owned by respondent No.4 came from the side of Chebbawal in a rash and negligent manner being driven by respondent No.5 with high speed and without following traffic norms. The said truck hit the rear side of the bus, resulting in serious injuries on the right arm of the claimant. The truck driver ran away from the spot after leaving the truck at some distance. The claimant was removed to hospital where he was treated. With this background, the claim petition came to be filed.

The Tribunal held under issue No.1 that it was driver of the offending truck who was rash and negligent in terms of his driving and the accident took place on account of rash and negligent driving of respondent No.5. Compensation was accordingly assessed, but on account of contribution made by the injured himself in terms of his negligence by resting his arm on the window, the compensation was slashed from ₹4,20,000/- to 2,80,000/-.

Learned counsel for the appellant contended that the offending vehicle was insured by issuing cover note dated 06.03.1992 (Exhibit R-1). The vehicle was insured for the period 06.03.1992 to 05.03.1993 and cover note was accordingly issued to the insured. The accident took place during currency of insurance of the vehicle. A cheque of ₹44,909/- was issued by the owner of the truck towards insurance premium on 28.02.1992. The total amount did not commensurate to the calculations made by the Insurance company in the schedule of premium given by it. The cheque in question was allegedly dishonored and endorsement dated 18.03.1992 was issued by State Bank of India, asking the insurer with an endorsement "refer to drawer".

The appellant-Insurance Company issued a memo dated 03.04.1992 to the owner-respondent No.4, intimating that the receipt dated 06.03.1992 was cancelled and the Company was not on risk under the above cover note. Despite the aforesaid memo, it could not be explained that the policy No.401500/6300545/91 issued on 11.03.1992 was ever cancelled or not.

During the course of arguments, it transpired that the policy in question was never cancelled by the Insurance Company/appellant. The Insurance Policy was in operation at the time of accident. Non-payment of insurance premium did not entail in cancellation of policy at any point of time, rather the communication made by the Insurance Company was only in context of not owing any risk under the cover note. After issuance of Insurance Policy on 11.03.1992, the cover note would lose its significance. The communication dated 03.04.1992 could not be read beyond an information, conveying not to cover risk under the cover note. No evidence was produced at any point of time, whether the policy issued on 11.03.1992 was ever cancelled or communication was given to the owner that the Insurance Company would not undertake the risk under the policy on account of non receipt of insurance premium. Evidently, on account of

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dishonoring of cheque, no proceedings in terms of Section 138 of Negotiable Instruments Act were initiated. Even if, the Insurance company did not undertake such an exercise, the non-cancellation of policy on account of non-payment of Insurance premium would be a question to be appreciated. Insurance Company would be liable so long as Insurance Policy was in operation. No exception can be drawn by the information vide which owner was informed that the Insurance Company would not be liable for the risk under insurance cover.

In the light of above, I am of the view that this appeal is totally bereft of merit and the same is dismissed.

August 03, 2016 **(RAJ MOHAN SINGH)**
kapil **JUDGE**

Note(s) Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No