IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 2689 of 2016 (O&M)
Date of decision: 06.09.2016

M/s Ambala Silicate Udyog Jarot Road .... *Appellant*

Versus

Rajesh Kumar and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Surinder Mohan Sharma, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

CM 14866-CII of 2016

Allowed as prayed and copies of Ex. A-1 to A-4, are taken on record, subject to just exceptions.

Main case

The present appeal has been directed against the award dated 21.01.2016 passed by the Motor Accident Claims Tribunal (in short, 'the Tribunal') whereby compensation has been awarded in favour of Rajesh Kumar in respect of injuries sustained by him in a motor vehicular accident due to rash and negligent driving of Canter bearing No. HR 37-C-1646, driven by Ram Lal - respondent No. 2 and owned by M/s Ambala Silicate Udyog (appellant) and insured with MAGMA HDI General Insurance Company Limited-respondent No. 3.

The precise grievance of the appellant (insured) is that the learned Tribunal has wrongly exonerated the insurer of its liability to pay compensation to the claimant and as a consequence, liability has been fastened upon the driver and owner of the alleged offending vehicle.

Counsel for the appellant has submitted that as per the admitted position of the case, the owner approached the insurer on 06.11.2014; paid amount of premium of Rs.21,270/- in cash vide receipt dated 06.11.2014 Ex RX/7; vehicle was inspected; photographs were taken on that very day, even cover note was issued on 06.11.2014; the accident also occurred on 06.11.2014 at about 2.00/2.30 pm, thus, the insurer cannot escape its liability to pay compensation on the basis of cover note Ex. RX/15.

I have heard counsel for the appellant and perused the paper book particularly the award impugned.

Sunil Aggarwal, Proprietor of M/s Ambala Silicate Udyog appeared in the witness box and tendered into evidence his affidavit Ex.RW3-A by way of examination-in-chief. The learned Tribunal has given details of his testimony on pages 11 to 13 of the award under para 6 thereof.

Counsel for the appellant has not disputed the facts elicited in cross examination of the said witness. The witness has candidly admitted that cheque issued for payment of renewal of policy on an earlier occasion got dishonoured on its presentation to the bank, leading to cancellation of earlier policy in regard whereof an intimation was received by him vide registered letter Ex. RX12, received on 05.11.2014. It has also been proved on record that the insured again approached the company for insurance of the vehicle which was inspected by representative of the insurance company on 06.11.2014 at 12.10.pm vide inspection report Ex. RX1. It has further been admitted that cover note Ex.RX4 was issued regarding the vehicle for the period from 07.11.2014 to 06.11.2015 (mid night). A perusal of

Ex.RX15, relied upon by counsel for the appellant would also indicate that in Col. No. 3 under heading FORM 52 beneath (see Rule 142(1) of Motor Vehicle Rules, 1989), the time is stated to be 00 hours dated 07.11.2014. As the occurrence in question took place in day time of 06.11.2014 and insurance policy came into operation with effect from 07.11.2014 after mid night of 06.11.2014, no fault can be found in findings of the Tribunal that there was no contract of insurance subsisting at the time of occurrence in order to hold the insurer liable to indemnify the insured for the loss suffered by it. In this view of the matter, I do not find any error much less illegality in the impugned award, holding against the appellant.

For the foregoing reasons, the appeal fails and is dismissed accordingly.

(Rekha Mittal)
Judge

06.09.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No