IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 387 of 2013

DATE OF DECISION: 04.07.2017

The New India Assurance Co. Ltd. ....Petitioner

Versus

Dharam Wati and others ....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Neeraj Khanna, Advocate
for the petitioner.

Mr. S.S. Rangi, Advocate
for respondents No.4 and 5.

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<u>DAYA CHAUDHARY, J.</u>

This present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 17.5.2012 (Annexure P-1) passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'The Tribunal').

Briefly, the facts of the case as mentioned in the revision petition are that a claim petition was filed by the claimants, the legal heirs of deceased-Anil Kumar claiming compensation, which was allowed by the Tribunal vide order dated 17.8.1984 by awarding an amount of ₹2,20,320/- as compensation. The petitioner-Insurance Company had pleaded before the Tribunal that as per the terms and conditions of the policy of insurance, their liability was limited to the extent of ₹50,000/- as per Section 95 of the

Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') and as such they were not liable to pay any amount beyond ₹50,000/-. However, the amount of compensation was ordered to be paid by all the respondents jointly and severally.

Aggrieved by the award dated 17.8.1984, the petitioner-Insurance Company filed an appeal i.e. FAO No. 948 of 1984 before this Court, which was dismissed vide order dated 19.5.2003 with a direction that the entire amount of compensation be paid to the claimant-respondents. The appellant-Insurance Company was given liberty to recover the excess amount from the insured by executing this award against the insured to the extent of such excess as per provisions of Section 174 of the Act. It was also observed that the executing Court shall consider the liability of the Insurance Company viz-a-viz the insured independently being uninfluenced by the observation made by this Court in its order dated 19.5.2003.

The Insurance Company thereafter filed an application for execution for recovery of an amount of ₹4,97,334/- from the owner-judgment debtor on the ground that its liability was limited to the extent of ₹50,000/- as per order passed by this Court in the FAO and balance amount was to be recoverable from the owner along with interest. The owner-judgment debtor filed reply to the application stating therein that comprehensive policy was issued and liability of insurance company was not to the extent of ₹50,000/- only. The execution petition against the owner was dismissed by the Tribunal vide order dated 17.5.2012, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner-insurance company submits that liability of the insurance company is only to the extent of ₹50,000/- and by wrongly interpreting the provisions of Section 95 of the Act, the impugned order has been passed. Learned counsel further submits that no additional premium was paid for third party insurance and as per policy of the insurance, the insurance company is liable to pay the amount as per provisions of Section 95 of the Act. Learned counsel also submits that company has charged only ₹120/- and liability of the company is limited to the extent of ₹50,000/- only.

Learned counsel for respondents No.4 and 5 submits that policy was comprehensive and question of charging or not charging extra premium cannot absolve the insurance company from its unlimited liability. Learned counsel further submits that the insurance company filed incomplete copy of the insurance and there was no mention against the third pay risk. Learned counsel also submits that nowhere it was mentioned that the insured was entitled to ₹50,000/- only. The case was decided on the basis of evidence available on the record and no fresh evidence was produced. It is also the argument of learned counsel that a well reasoned order has been passed by holding that as per first column under Section 11 (1) (i) of the policy, there is no mention of limit of the liability, which shows that the liability of the insurance company was unlimited. The amount has already been deposited by the insurance company and it has no right to recover from the judgment debtor and as such the execution petition being devoid of any merit was rightly dismissed.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order dated 17.5.2012.

The facts relating to filing of claim petition, passing of award and filing of FAO and its dismissal by this Court on 19.5.2003 are not disputed. While dismissing the appeal of the Insurance Company a direction was issued to pay the entire awarded amount i.e. ₹2,20,320/- with interest at the rate of 10% per annum from the date of filing of the petition i.e. 30.9.1982 till its realization to the claimants and on making such payment, the appellant-insurance company was given liberty to recover excess amount from the insured by executing the award against the insured to the extent of such excess as per provisions of Section 174 of the Act.

The question for consideration by this Court is as to whether the liability of the insurance company is limited to the extent of ₹50,000/- or the entire amount awarded by the Tribunal has to be paid by the company.

Admittedly, no additional premium was paid for third party insurance except an amount of insurance. A per the policy, the company was liable to pay the amount as per provisions of Section 95 of the Act. In case of comprehensive policy, the company was liable to pay the amount of damages suffered by the insured to the insurer.

In the present case, the company has charged only ₹120/-and as such the liability is limited. It is also admitted that no extra amount was paid for unlimited third party insurance and the liability of the company was limited. As per terms of the policy and Section 95 of the Act, the petitioner-insurance company has a right to recover the excess amount from the owner and as such the order passed by the Tribunal dated 17.5.2012 is liable to be set aside.

Accordingly, there is merit in the contentions raised by learned counsel for the petitioner and the present petition is partly allowed and order dated 17.5.2012 passed by the learned Tribunal is modified to the extent that the liability of Insurance Company is to pay ₹50,000/- only. The petitioner-Insurance Company has already deposited the amount as per decision in FAO. Hence, the insurance company has a right to recover the amount in excess of ₹50,000/ already deposited.

04.07.2017 **(DAYA CHAUDHARY)**
pooja **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes