IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3730 of 2017
Date of Decision: 19.09.2017

Bharat Bhushan Makkar ......Petitioner

Versus

National Insurance Company, Kaithal .....Respondent

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

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Ms. Shamsher Kaur, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed this revision petition against the order dated 02.11.2016 passed by Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal') whereby the application filed by the petitioner for grant of interest on the amount paid by him to the claimant was rejected.

[2]. The Tribunal passed an award dated 31.08.2002 against the petitioner thereby absolving the Insurance Company from its liability. An award to the tune of Rs.85,000/- was passed along with interest @ 9% per annum from the date of filing of the claim petition till final realisation of the amount. The Insurance Company was absolved on technicalities.

[3]. Petitioner is the owner of the offending vehicle. He filed FAO No.153 of 2003 in the High Court, which was decided on 12.02.2014 in favour of the appellant. High Court has observed that the Insurance Company could not have been exonerated in the manner done by the Tribunal. The exclusion of the liability of the insurer as contained in the award was set aside. The appeal was allowed to the above extent. It was also ordered that if any portion of the award was satisfied by the appellant, he can exercise his right of recovery against the Insurance Company in the execution proceedings.

[4]. As a consequence of the aforesaid order dated 12.02.2014, the execution was filed by the petitioner before the Motor Accident Claims Tribunal, Kaithal on 19.11.2015 to which objections were filed by the Insurance Company. Executing Court/Tribunal has rejected the claim qua interest on the amount paid to the claimant by the petitioner from 05.06.2003 to 05.06.2015. Evidently, the Insurance Company has made payment of Rs.96,000/- to the petitioner as was paid by the petitioner to the claimant with the break up i.e. Rs.25,000/- on 22.11.2002 and Rs.71,000/- on 05.06.2003.

[5]. I have heard learned counsel for the parties.

[6]. Evidently, the liability of the Insurance Company was held to be in existence from the very inception as per order

passed by this Court in FAO No.153 of 2003 on 12.02.2014, wherein it was specifically recorded that the Insurance Company could not have been exonerated in the manner as done by the Tribunal. The only irresistible conclusion that can be drawn from the aforesaid order is that the Insurance Company is liable to indemnify the insured from the very inception. Had the Insurance Company been held liable at the time of award by the Tribunal, the Insurance Company would have paid the awarded amount along with interest. Since the Insurance Company has utilized the amount paid by the petitioner during this intervening period of about 12 years, therefore the Insurance Company cannot be permitted to swallow the amount of interest for the said period.

[7]. Consequently, this revision petition is allowed. Petitioner is held entitled to the interest @ 7.5% per annum on amount of Rs.96,000/- from 05.06.2003 to 05.06.2015 to be paid by the Insurance Company within a period of 2 months from the date of receipt of certified copy of this order.

September 19, 2017. **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No
Whether reportable Yes/No