IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 02.11.2017

FAO 2388 of 2001 (O&M)

National Insurance Company Limited .... Appellant

Versus

Riaz B Sheryari and others ....Respondents

FAO No. 2389 of 2001 (O&M)

National Insurance Col. Limited ....Appellant

Versus

Sidharth Prashar and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Deepak Suri, Advocate
for the appellant-insurance company

Col. Nirmal Singh-respondent No. 3 in person

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as identical questions of law and facts are involved for adjudication. For brevity, facts are taken from FAO No. 2388 of 2001.

Riaz B Sheryari and Sidhrath Prasher filed applications under 166 of the Motor Vehicles Act, 1988, claiming compensation in respect of injuries suffered by them in a motor vehicular accident that took place on 31.08.1998 due to rash and negligent driving of UNO Fiat Car No. UP-16-4390 by Amrit Pal son of Col. Nirmal Singh (respondent No. 1 therein).

The Motor Accidents Claims Tribunal, Gurgaon assessed compensation payable to the injured victims and the driver, owner and insurance company of the vehicle in question were held liable to pay compensation being jointly and severally liable to pay the same.

Counsel for the appellant – insurance company has submitted that policy in favour of the owner/insured of the vehicle in question was issued on 19.08.1998 on the basis of cheque dated 19.08.1997 for a sum of Rs.6,107.00 but the said cheque, on its presentation to the Bank got dishonoured and as a consequence thereof, policy was cancelled on 23.09.1998. It is further submitted that the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative, it be given recovery right against the insured after satisfying claim of the injured victims.

Respondent No. 3 in person would urge that till the date of accident, he has not received any intimation from the insurance company that the cheque got dishonoured. It is further submitted that when he went to the office of the insurance company to give an intimation about the accident in the first week of September 1998, only then he was informed that cheque issued by him got dishonoured because of wrong mentioning of the year in the date of cheque. It is further submitted that the insurance company has already satisfied claim qua Own Damage to the vehicle in question in view of letter Ex R/3, therefore, insurance company cannot be heard to say that either it is not liable to pay compensation to the claimants or entitled to press claim for recovery against the insured.

Counsel for the insurance company, in reply, has not disputed correctness of letter Ex.R/3 with regard to the insurance company having agreed to pay Own Damage claim to the insured but only as a measure of goodwill and matter of grace.

I have heard Counsel for the appellant and respondent No. 3 in person, perused the paper book particularly the award impugned.

Be that as it may, it is undisputed position of the case that the appellant issued policy in favour of the insured on 19.08.1998 and said policy was in force on the date of accident i.e. 31.08.1998. It is also not denied that the insurance company vide letter Ex R/3 agreed to satisfy Own Damage claim of the insured. Under the circumstances, the insurance company is not entitled to contend that either it is not liable to pay compensation to the claimants or entitled to seek recovery right against the insured.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed.

Photocopy of this order be placed on the file of connected case.

(Rekha Mittal)
Judge

02.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No