IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2915 of 2013
Dated : 10.11.2017

United India Insurance Co.Ltd.
... Appellant
Versus
Kanta Kumari and others
...Respondent

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr.Vikas Mohan Gupta, Advocate and
Ms.Sonal Dutta, Advocate
for the appellant.
Mr.Gagandeep Singh, Advocate for
Mr.A.S.Manaise, Advocate for respondents No.6 and 7.

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The present appeal has been filed by the Insurance company against the award dated 29.1.2013 passed by the Motor Accidents Claims Tribunal, Amritsar (for short, 'the Tribunal').

The only grievance raised by the Insurance company in the present appeal is that it was only cover note which was issued on 4.7.2011, the validity of which, the appellant has challenged. Their contention is that since policy was issued on 28.8.2011, therefore, the vehicle was not insured on the date of accident.

In the present case, the fact regarding accident and quantum of compensation is not in issue.

The accident occurred on 17.8.2011, Gurbux Rai Sharma lost his life in a motor vehicular accident involving vehicle No.PB-05-Q-4700.

A claim petition was filed by the legal heirs of the deceased. The Tribunal awarded a sum of Rs.3,44,800/- along with interest at the rate of 6% per annum.

One of the issue raised by the Insurance company in the claim proceedings was that vehicle was not insured on the date of the accident and the cover note Exhibit R-2 was a fake one. It was stated that the Insurance policy was issued on 28.8.2011. The counsel for the Insurance company has reiterated the above contention in the appeal also.

Learned counsel for the owner and driver vehemently argued that the cover note was issued on 4.7.2011 and the same was exhibited before the Tribunal. He further contended that the cover note itself mentioned that the effective date for commencement of insurance is 5.7.2011.

I have heard learned counsel for the parties, perused the paper-book and the record.

It is a case where the Insurance company is trying to encash its position as an insurer as well as principal. Rajiv Kumar Sharma, the Administrative Officer appeared as RW-3 before the Tribunal. He specifically admitted in his cross-examination that no notice regarding cancellation of cover note No.231394 was issued. He admitted that Exhibit R-2 cover note bears the stamp of the Insurance Company. He further admitted that Insurance company gives agency to the different persons to issue cover notes. He stated that the dealer of the motor vehicles also issues cover note on their behalf. He never denied the fact that if such cover note is issued by the agent of the company, the company is bound by the cover note. He was directed to bring the record of the cover notes. He produced the record of the cover notes bearing 231382 to 231400. On perusal of the said record, Tribunal found that in the said cover note book, Exhibit R-2 cover note was missing. The record pertains to Insurance company, if the said cover note is not produced during the proceedings, there is no other option than to draw adverse inference against the Insurance company.

During the course of the arguments, it was specifically put to counsel for the appellant that if any action was taken against the defaulting person who possessed the said cover note book. He candidly stated that he has no instructions on this issue. Meaning thereby that from 2011 to 2017 except that, Insurance company was trying to wriggle out of their liability in this claim petition, no action was taken or atleast not brought on record which was taken against the defaulting person.

On the one hand, it is not denied that the said cover note was issued from the cover note book of the company and nothing was done against the person who has issued the said cover note, on the other hand, liability to pay the compensation is being denied.

The Administrative Officer admitted that the cover note bears stamp of the Insurance company. With regard to the signatures, he only stated that the said signature is not of the officer of the company. But the company has not made any effort to show that signatures on the cover note was not of their agent. In such circumstances, it is evident that the cover note was issued by some agent of the company. This is supported by the fact that blank cover notes/book will not be given to a stranger specifically when cover notes are bearing stamps of the Insurance company.

From the perusal of the cover note in row No.3 "effective date of commencement of Insurance for purpose of 'the Act....is '5.7.2011". This makes the position clear that the offending vehicle was duly insured on the date of accident i.e. 17.8.2011.

It would be pertinent to mention here that the owner of the insured vehicle cannot be punished for the reason that there was some misdeed between the principal and the agent i.e. the Insurance company and its agent.

The Insurance company raised a plea of a fake cover note, the onus is casted upon the appellant to prove that the cover note was a fake one. The said onus has not been discharged. Rather, the record i.e. carbon copy of the cover note was withheld by the Insurance company in the claim proceedings.

Hence, the appeal is without any merits, and the same is dismissed, accordingly.

(AVNEESH JHINGAN)
JUDGE

10.11.2017
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Whether speaking/reasoned *Yes/No*
Whether Reportable *Yes/No*