In the High Court of Punjab and Haryana at Chandigarh

FAO NO.2023 of 2015(O&M)
Date of Decision:11.12.2017

HDFC ERGO General Insurance Company Limited

---Appellant

vs.

Smt. Roshni Devi and others

---Respondents

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

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Present: Mr. Rajbir Singh, Advocate
for Mr. Sanjiv Goyal, Advocate
for the appellant

Mr. Chankya Pandit, Advocate
for respondent No. 5

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Rekha Mittal, J.

The present appeal directs challenge against award dated 2.1.2015 passed by the Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") to the limited extent of rejecting claim of insurer qua right of recovery against Bar Singh son of Chhaban Singh, registered owner/insured of truck bearing No. HR-41A-3618.

Counsel for the appellant has submitted that the insured paid premium by way of cheque and the policy was issued, effective w.e.f. 2.10.2011 to 1.10.2012. The cheque qua premium was presented for encashment and got dishonoured on 21.10.2011 and as a consequence, policy was cancelled and due intimation in this regard was sent to the insured. It is argued with vehemence that though the insurer is liable to satisfy claim of third party but as the policy was cancelled from the date of its inception, insurer is entitled to recover the amount of compensation after discharging liability qua the claimants.

Counsel representing respondent No. 5 would urge that the vehicle in question had been sold by respondent No. 5 to respondent No. 4 prior to the accident on 5.10.2011, therefore, the insurance company cannot press for right of recovery against respondent No. 5.

Indisputably, respondent No. 5 Bar Singh son of Chhaban Singh was registered owner of the vehicle in question on the date of accident i.e. 5.10.2011. There is no denial that the policy in question was issued in the name of Bar Singh son of Chhaban Singh subject to encashment of cheque issued qua payment of premium. It is not denied that cheque on its presentation to the bank got dishonoured and consequently the insurance company cancelled the policy and sent intimation to the insured. Under the circumstances, respondent No. 5, the insured and registered owner of the vehicle cannot escape his liability to reimburse the amount to the insurance company on account of the insurer having discharged his (owner's) liability to pay compensation to the claimants. In this view of the matter, I find merit in contention of the appellant that the insurance company is entitled to recover the amount of compensation from respondent No. 5 after payment to the claimants. The award passed by the

Tribunal is accordingly modified.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

11.12.2017
paramjit

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