

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6702 of 2015

Date of Decision: 17.02.2018

Gaurav Sharma

.....Petitioner

Vs.

National Insurance Company Limited and anr.

.....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Sanjay Jain, Advocate,
for the petitioner.

Mr.Om Pal Sharma, Advocate,
for respondent No.1.

RITU BAHRI, J. (ORAL)

The petitioner has come up in revision against the order dated 31.08.2015 (Annexure P-1) whereby, an application filed by the petitioner to not execute the Award against him passed by MACT, Ambala dated 06.03.2009 has been dismissed.

The Execution application was filed pursuant to the Award passed by the learned Tribunal on 06.03.2009 and the petition was instituted on 24.01.2006. The present objector was impleaded as respondent No.2 being owner of the motorcycle which caused the accident. As per the Award, the recovery rights had been given to the Insurance Company to recover the amount from judgment-debtor respondents No.1 and 2. The Insurance Company after making the payment of Award has filed the execution petition for recovery against respondent No.2/present petitioner. The

provisions of Order 32 Rules 3,4 and 5 of CPC as he was not properly represented before the learned Tribunal and the learned Tribunal also did not appoint a Court guardian for the minor objector and his date of birth is 17.11.1989 and he was minor at the time of accident and he was not competent and capable to enter into any agreement with the Insurance company.

The application of the petitioner in the abovesaid fact was considered. In the impugned order it has been observed that this information that objector was a minor was with-held by the owner from the claimant as well as insurance company. This plea was not taken by him even at the time of filing of execution on 12.08.2011 and for the first time this objection was taken by him only 06.12.2014 when warrants of arrest have been issued against him.

After hearing counsel for the parties, the present revision deserves to be allowed. A reference has been made by the judgment of Madhya Pradesh High Court in the case of **National Insurance Company Limited Vs. Kusum Devi Mishra 1999(2) ACJ 1213**, whereby, Insurance company has come up in appeal against the Award dated 16.01.1995 on the ground that the father of minor had obtained this policy by suppressing the material facts of minority from the Insurance Company. The accident took place on 06.08.1992 by truck No.RPJ-5588 which was owned by minor and it was driven by the driver employed by him. The learned Tribunal passed an Award of Rs.4,53,600/- against the owner, driver and insurer. On appeal, the plead taken by the Insurance Company that appellant cannot be made liable to pay as the policy was void from its inception, so at the time of entering into contract of insurance, the respondent who is the insured was a

minor and this material fact was suppressed by the father of the owner/minor. Hence, he was not competent to enter into contract in view of Section 11 of the India Contract Act. It was further referred to the Section 11 of the Contract Act that the contract of insurance was in the nature of indemnity whereby the insurer had undertaken to indemnify the insured on the happening of an uncertain event by use of motor vehicle, which makes the insured liable to pay. The contract of insurance does not create any liability on the minor. Therefore, it would not be void. On the other hand the contract of insurance was for the benefit of the minor; hence it would not a void contract but it would be binding on the appellant Company to indemnify the insured/owner of the vehicle and to pay compensation under the Award. In the above case, motor vehicle involved in the accident was a goods carriage registered as such in certificate of registration issued by the Registering Authority as defined in Section 2(37) of the Act. The vehicle was to be used at a public place as defined in Section 2(34) of the Act, in accordance with the conditions of permit as defined in Section 2(31) of the Act. Chapter IV deals with the registration of the motor vehicle. When a motor vehicle is to be used in a public place, it had to be necessarily insured against third party risks. Section 145 and 146 deals with necessity for insurance against third party risk. Sub-section(1) of section 146 provides that no person shall use, except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there was in force in relation to the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirement of Chapter XI of the Act, corresponding to Chapter VIII of the repealed Act. No provision of

insurance cannot be issued to a registered owner of the vehicle who was minor or not, of a motor vehicle, which was to be used at a public place, such vehicle necessarily had to be insured against the third party risks under Section 146 of the Act. The authorised insurer as defined in clause(a) of Section 145 of the Act, cannot refuse to insure the vehicle, certainly on acceptance of proposal from and payment of due premium, and has to issue a certificate of insurance as defined in clause(d) of Section 145 of the Act, so as to cover the liability in accordance with the provisions of Section 147 of the Act. So, In view of the above, the contention that the insurer is not liable to pay compensation and the policy is void due to suppression of material fact, has no merit. Even otherwise, there was no suppression of material fact. The agent of the Insurance Company knew full well that the owner is a minor. He accepted the premium and the policy of insurance covering third party risks was issued in the name of the minor by the appellant. The said policy was never repudiated or cancelled. Besides to avoid the liability under Section 149(2) of the Act corresponding to Section 96(2) of the old Act, the expression 'material fact' and 'material particulars' in sub-section (6) of Section 149 [sub-section (5) of Section 149(2) of the old Act] should be of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, if so, at what premium and on what condition. The insurer while insuring the vehicle of a minor through the guardian cannot be said to have been influenced in his judgment as to the premium and other conditions merely because it is not disclosed that the minor was the real owner of the vehicle. Therefore, the contract of insurance cannot be said to be void on this ground which was obtained by the father of the owner.

Learned counsel for the respondent/Insurance Company has draw the attention to the deposition of the petitioner as RW-2 that he was owner of the motorcycle and he had given his motorcycle to one Baldev Singh on seeing his driving licence issued from the Licensing Authority, Panchkula. He has further drawn the attention to the the ratio of the principles laid down in **National Insurance Company Limited Vs. Kusum Devi Mishra and Others 1999 ACJ 1213** binds the present objector as it is clearly held in the cited case that a minor is competent to be a owner of the vehicle and there being no prohibition to issue Policy of Insurance for the same by entering into a contract. He cannot now escape from his liability to make the payment to the respondent No.3, who has made the payment to the claimants on behalf of respondent No.1 and 2 which includes the present objector.

The argument made by the Insurance Company is liable to be unacceptable as the vehicle has been insured in the name of minor and it would be a void contract and insurance Company cannot be absolved from the responsibility to make the payment of claim. In the fact of the present case at this stage judgment of Madhaya Pradesh High Court has not been proceeded by the executing Court. In reply of their objection (Annexure P-3), respondent/Insurance Company has taken a specific stand in paragraph 7 that Gaurav Sharma-respondent No.2 appeared as a witness (RW-2) and tendered his affidavit Ex.RA on the fact that on 08.10.2005 at about 12:00 noon Baldev Singh met him at Jagadhri Gate Ambala City and demanded his motorcycle for going to Ambala Cantt. He refused to give the motorcycle. On this Baldev Singh had shown him the driving license issued from the Licensing Authority Panchkula which was duly stamped and signed. He

handed over his motorcycle to him. Gaurav Sharma owner of the vehicle had tried to wriggle out of his liability by deposing that he had taken every precaution that respondent No.1 possessed a genuine driving license and thus, he cannot be held liable to make payment of the compensation amount as he has discharged his duty of ascertaining the genuineness of the driving license. He had moved an application asserting therein that he was minor as such, no liability is fastened upon him.

A Division Bench of the Bombay High Court in the case of Great American Insurance Co. Madanlal Sonulal (supra) , considered a case where the guardian of minor effected an insurance against fire in respect of the minor's property. The Company also knew that the minor was the owner of the property. The property was burnt. A suit was filed by the minor through guardian to claim loss. The Company contended that the contract was void and could not be enforced. The Court observed that the contract sued upon was not a contract which was made by a minor, although it was made on behalf of the minor and for his benefit and that it was entitled to sue on that. The Court further observed that if the contention of the defendant is right, it means that property of minors cannot be insured. A great many joint family business descend upon minors, and such business are in practice managed by some adult member of the family in the name of the minor and if that member of the family cannot effect an insurance on behalf of the minor, the position is an extremely serious one particularly if insurance companies are going to do what they generally do not do; but what is done by the defendant company in this case, namely, set up a purely technical defence to the policy. As the agent and the Company knew full well and deliberately entered into the contract which was for the benefit of the minor and having

insured the property, the premium having been accepted, the liability cannot be avoided.

Learned counsel for the petitioner has referred to the judgment of the Supreme Court in the case of **Pepsu Road Transport Corporation Vs. National Insurance Company (2013) 10 Supreme Court Cases 217** to contends that if owner exercised reasonable care, he need not further verify genuineness of licence from licensing authority before appointing a driver, except where at the time of insurance of vehicle or thereafter insurer required owner to make such verification or where insurer draws owner's attention that driver's licence was fake. In, para-10 of this judgment, it has been observed as under:-

“ In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter

regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

On facts, in the instant case, the appellant employer had given his motorcycle to the third respondent Baldev Singh as driver in 2006. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. When Baldev Singh had shown the licence to the petitioner, the same was issued from Licensing Authority Panchkula, which was duly stamped and signed and thus the petitioner handed over his motorcycle to him.

In view of the above circumstances, the revision is allowed. The order dated 31.08.2015 (Annexure P-1) is set aside and Insurance Company cannot be absolved from the liability to pay compensation. Hence, respondent/Insurance company is liable to indemnify the petitioner and hence, there can be no recovery of the compensation already paid to the claimants.

(RITU BAHRI)
JUDGE

17.02.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No