IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1114 of 1999
Date of Decision : 16.01.2018

National Insurance Company Ltd. ....Appellant

Versus

Jagjit Kaur ....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.M. Suri, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondents no. 2 to 5.

Surinder Gupta, J.

This is appeal by National Insurance Company Ltd. challenging award dated 28.01.1999 passed by Motor Accident Claims Tribunal, Kapurthala (later referred to as 'the Tribunal') awarding compensation of ₹2,88,000/- to claimants for death of Harvinder Singh (later referred to as 'the deceased'), in a motor vehicle accident with truck bearing registration no. PBK-8797 (later referred to as 'the offending vehicle').

2. Learned counsel for the appellant-Insurance Company has argued that no liability of Insurance Company to pay compensation is attracted in this case as the accident took place with the offending vehicle on 20.07.1995 at 10.30 a.m. and cover note of the insurance policy was issued at 02.00 p.m. on that day. This fact is proved from statement of RW-2 Om Parkash Dutta, Development Officer of the Insurance Company.

3. The Tribunal has carefully considered the above argument

advanced by learned counsel for the Insurance Company before it and has recorded a detailed finding on this issue, which reads as follows:-

> *"10. The plea of the Insurance Company is that the truck involved in this accident no. PBK-8797 was got insured after the accident. Since the policy was obtained through fraud, so the Insurance Company is not liable to pay compensation. Nirmal Singh, respondent examined him as RW-1. He deposed that he is owner of truck no. PBK-8797. R-1 is copy of the registration certificate, R-2 is copy of the route permit. He got this truck insured on 20.07.1995. R-3 is the cover note. The insurance policy was obtained on 20.07.1995 at 9.30 a.m. Ex. A-3 is copy of the FIR. It shows the time and date of accident as 10.30 a.m. on 20.07.1995. The Insurance Company examined RW-2 Om Parkash Dutta, Development Officer. He deposed that copy of the insurance policy is R-5. It is from 20.07.1995 to 19.07.1996. He deposed that the cover note of this insurance policy was issued by him. This policy was issued at about 2.00 p.m. on 20.07.1995. His cross-examination reveals that he has not given the time on the cover note of the policy. He admitted that it was his duty to put the time on the cover note to show at what time it was issued. The law is well settled that even if the policy was obtained*

on the date of the accident, the Insurance Company is liable. The case of ***New India Assurance Company Limited-Appellant*** *versus* ***Ram Dayal and others-respondents, 1990 A.C.J. 545 (SC)*** *can be referred here. Policy was obtained on the date of accident. Insurance Company repudiated its liability on the ground that the policy had been taken after the accident. Whether the policy obtained on the date of the accident becomes operative from the previous midnight of the date of the insurance and the Insurance Company was liable, held yes. When a policy is taken on a particular date, its effectiveness is from the commencement of that date. In the case of* ***Maya Devi and others-appellants*** *versus* ***Hodo Raj and others-Respondents, 1986 (2) PLR 130****, the accident took place at 07.30 a.m. The truck was got insured on the same day after 10.00 a.m. It was held that if the insurance policy is obtained on the same day after the accident, it would operate from the previous midnight. The Insurance Company is held liable to pay compensation. In the case of* ***Ram Dayal and others-Petitioners*** *versus* ***Smt. Barfi Devi and others-Respondents, 1987 (1) P.L.R. 44,*** *the truck was got insured on the same day after the accident, held the Insurance Company was liable. So,*

> *first of all, it is not cogently proved that the truck was got insured after the accident. Even if, it is taken that it was got insured on the same date after the accident, the Insurance Company is liable......"*

Learned counsel for the appellant could not refer to any law or citation wherein observations contrary to what has been observed by the Tribunal has been found. The only point on which learned counsel for the appellant has stressed is testimony of RW-2 Om Parkash Dutta, who issued cover note and has stated that the same was issued at 02.00 p.m. on 20.07.1995. The statement of RW-2 Om Parkash Dutta does not inspire confidence as he has not mentioned time of issuance of cover note despite mandatory requirement in this regard. There is nothing on record to show that if RW-2 Om Parkash Dutta has wrongly issued the cover note or had colluded with owner of the offending vehicle, Insurance Company has taken any action against him. As per law relied upon by the Tribunal, the policy issued on a particular date starts from midnight when that day starts.

Keeping in view above facts, I find no merit in submissions of learned counsel for the appellant and the same are discarded. No other point has been raised by learned counsel for the appellant.

The instant appeal has no merit and the same is dismissed.

January 16, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

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