In the High Court of Punjab and Haryana at Chandigarh

FAO-6133 of 2011(O&M)
Date of Decision:15.1.2018

ICICI LOMBARD General Insurance Company
---Appellant

vs.

Banwari Lal and others
---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R.S.Dhull, Advocate
for the appellant

Mr. Rajneesh Chadwal, Advocate
for respondent No. 3

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Rekha Mittal, J.

CM No. 23788-CII of 2011

Prayer in this application is for condoning delay of 51 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 51 days in filing the appeals stands condoned.

Disposed of accordingly.

CM No. 23787-CII of 2011

Prayer in this application is for condoning delay of 75 days in refiling the appeal.

In view of averments made in the application supported by affidavit of Sh. R.S.Dhull, Advocate counsel for the applicant and arguments advanced by counsel for the applicant, application is allowed and delay of 75 days in refiling the appeal stands condoned.

Disposed of accordingly.

FAO- 6133 of 2011

The present appeal directs challenge against award dated 8.1.2011 passed by the Motor Accidents Claims Tribunal, Narnaul (in short "the Tribunal") whereby compensation has been awarded to Heera Lal on account of injuries sustained in a motor vehicular accident that took place on 14.2.2008.

The sole submission made by counsel for the appellant is that as the injured was gratuitous passenger/traveller in a goods carrier i.e. Canter No. RJ-32G-2941, in absence of the injured having paid special premium covering risk of death or injury to a passenger carried in a goods vehicle, insurance company is not liable to pay compensation . In support of his contention, he has relied upon judgment of this Court in FAO No. 4290 of 2014 titled "Data Ram and another vs. TATA AIG General Insurance Company Limited and others" alongwith connected case decided on 24.8.2017.

Counsel for the claimant/respondent No. 3 has submitted that as the injured was engaged for loading and unloading of goods in the vehicle in question, insurance company cannot be exonerated of its liability to pay compensation.

I have heard counsel for the parties, perused the paper book and the records.

Perusal of testimony of Heera Lal makes it evident that no such plea has been raised by the injured that he was engaged in the job of loading and unloading of goods from the vehicle in question. There is nothing on record suggestive of the fact that any goods/articles were being carried in the vehicle in question much less Heera Lal travelling in the vehicle as an owner or representative of owner of those goods. It is also not plea of the injured that he was working as a conductor on the canter. Under the circumstances, it can safely be concluded that Heera Lal was a gratuitous passenger, therefore, risk of injury or death of such a passenger is not covered under the policy issued by the insurance company.

The Tribunal, in para 9 of the award, has rejected this contention of the insurance company by saying that Section 163-A of the Act imposes an obligation upon the insurer to satisfy the award. However, Section 163-A of the Act does not debar the insurance company from raising defences available under the relevant provisions of the Act. In the case at hand, as injury to a gratuitous passenger is not covered within the purview and ambit of insurance policy purchased by the insured, the insurance company has no obligation in law to indemnify the insured and pay compensation to a claimant either under Section 163-A or Section 166 of the Act. The controversy raised in the present appeal is squarely covered in favour of the insurance company by the judgment of this Court in **Data Ram and another's case (supra)** wherein this Court has rejected contention of the claimant that the insurance company may be directed to pay compensation to the injured though it may be entitled to press for recovery right against the insured.

No other point has been raised.

For the foregoing reasons, the appeal is allowed. The award passed by the Tribunal is modified to the extent that the insurance company shall not be liable to pay compensation. No order as to costs.

(Rekha Mittal)
Judge

15.1.2018
paramjit

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