In the High Court of Punjab and Haryana at Chandigarh

FAO No.4400 of 2013(O&M)
Date of Decision:14.3.2018

Bajaj Allianz General Insurance Company Limited

---Appellant

vs.

Manohar Lal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Subhash Goyal, Advocate
for the appellant

Mr. A.S.Sidhu, Advocate
for respondent No. 5

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<u>Rekha Mittal, J.</u>

The present appeal directs challenge against award dated 5.10.2012 passed by the Motor Accidents Claims Tribunal, Gurdaspur (in short "the Tribunal") whereby compensation has been awarded on account of death of Vijay Kumar in a motor vehicular accident that took place on 27.3.2010.

Counsel for the insurance company, at the outset, would inform that appeal has been preferred to seek recovery right against the insured/registered owner of truck bearing No. PB-02-AN-9657.

To substantiate his contention in this regard, it is argued that the policy Ex. R-3 was issued on 29.3.2010 in the name of Mr. Jaswant Singh and Kulwant Singh with period of insurance from 21-Mar-2010 00:00

to 20-Mar-2011 Midnight but subject to the condition that if premium is paid through cheque, the policy is void ab initio in case of dishonour of cheque. It is further argued that the cheque issued by Jaswant Singh got dishonoured for want of sufficient funds on 31.3.2010 and an intimation in this regard was sent to Mr. Jaswant Singh and Kulwant Singh vide registered letter, copy whereof is Ex. R3 and postal receipt R4. It is further argued that later the policy was cancelled vide document Ex. R6, therefore, the insurance company is entitled to press for right of recovery against insured Mr. Jaswant Singh and Kulwant Singh.

Another submission made by counsel is that though the vehicle in question was sold by its previous owner and even the registration was transferred in the name of Palwinder Singh-respondent No. 5 on 6.7.2009 but the policy was obtained by Jaswant Singh and Kulwant Singh without informing the insurance company about change of registered owner of the vehicle. It is further argued that the insurance company insured the vehicle that is admittedly owned and possessed by respondent No. 5 who was also registered owner of the vehicle on the date of obtaining policy Ex. R-3, respondent No. 5 is liable to refund the amount paid to the claimants by way of indemnification. In addition, it is argued that even if respondent No. 5 is not held liable to refund the amount to the insurance company on the aforesaid ground, insurance company is entitled to recover the amount of compensation from respondent No. 5 on the ground that driver-cum-owner of the vehicle was not possessing a licence to drive heavy transport vehicle. For this, he has invited attention of the court towards driving licence Ex-R-2 and registration certificate Ex. R1. According to counsel, as per driving licence Ex-R-2, Palwinder Singh was issued licence of light motor vehicle valid upto 25.11.2005 which was renewed upto 23.11.2011 but the vehicle in question is a heavy transport vehicle with gross vehicle weight of 25000 kgs and classified as heavy transport vehicle as per description given in the registration certificate.

Counsel representing respondent No. 5, on the contrary, has refuted contention of counsel for the insurance company by contending that no intimation was sent by the insurance company to respondent No. 5 either with regard to dishonour of cheque or cancellation of policy. Notice, if any, was issued to Sh. Jaswant Singh and said Jaswant Singh was not impleaded as a party in the proceedings before the Tribunal. He has further argued that the insurance company cannot press for right of recovery against respondent No. 5 even on the ground that licence possessed by Palwinder Singh did not authorize him to drive heavy transport vehicle.

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

Counsel for the insurance company has not disputed that no notice with regard to dishonour of the cheque qua premium was issued to Palwinder Singh nor he was intimated about cancellation of the policy. Indisputably, Jaswant Singh and Kulwant Singh in whose name the policy was issued were not a party to the proceedings before the Tribunal. Under the circumstances, the insurance company cannot press for right of recovery against Palwinder Singh on the premise that cheque issued by Jaswant Singh for payment of premium having got dishonoured and an intimation being given to Jaswant Singh and Kulwant Singh in this regard.

This brings the court to plea of the insurance company for giving right of recovery for want of valid licence with Palwinder Singh to drive heavy transport vehicle. Indeed, Palwinder Singh cannot be allowed to blow both hot and cold in the same breath. If he says that as the policy has been issued in the name of previous owner, he cannot be construed as an insured under the policy even though the vehicle stood registered in his name on 6.7.2009 before the policy Rx. R-3 was issued by the insurance company, he cannot seek indemnification by the insurance company on the basis of policy Ex. R-3, therefore, he alone would be liable to pay compensation to the claimants being the driver and owner of the offending vehicle. Conversely, if he seeks indemnification by relying upon policy obtained by the previous owner of the vehicle in question, he cannot escape consequence of defences available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988. In this view of the matter, the insurance company shall be entitled to recovery right against respondent No. 5 in case plea of the insurer is accepted that driver of the offending vehicle was not possessing a valid licence.

Perusal of the driving licence Ex-R-2 makes it evident that the same was issued for light transport vehicle and was renewed as such upto 23-11-2011. The registration certificate Ex. R-1 leaves no manner of doubt that the vehicle is described as heavy transport vehicle and its gross vehicle weight is 25000 Kgs i.e. front axle 6000kgs and rear axle 19000 kgs. As Palwinder Singh was not possessing a licence to drive heavy transport vehicle, there is breach of the terms and conditions of the policy constituting a defence in favour of the insurer. The Tribunal did not appreciate documents Ex. R1 and R-2 in right perspective while deciding issue No. 4 against the insurance company, in view of its findings recorded in para 14 of the award. In the given circumstances, the insurance company shall be entitled to recover compensation paid to the claimants, from respondent No. 5 by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. However, the insurance company may take recourse to appropriate proceedings against Jaswant Singh and Kulwant Singh qua cancellation of policy due to dishonour of cheque drawn for payment of premium, in accordance with law. No order as to costs.

(Rekha Mittal)
Judge

14.3.2018
paramjit

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