IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6296 of 2015(O&M)

Date of decision: 23.5. 2018

Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Paramjeet Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. P.S. Dhaliwal, Advocate for respondents No.1 to 3.

Mr. S.S. Brar, Advocate for respondent No.5.

None for respondent No.6.

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REKHA MITTAL, J.

CM No.6881-CII of 2018

Heard.

Allowed as prayed for.

Annexures R-5/1 and R-5/2 are taken on record subject to just exceptions.

Disposed of accordingly.

FAO No.6296 of 2015

The present appeal directs challenge against award dated 12.05.2015 passed by the Motor Accidents Claims Tribunal, Barnala (in short 'the Tribunal') whereby compensation has been awarded on account of death of Malkiat Singh in a motor vehicular accident that took place on 30.04.2013 due to rash and negligent driving of Tata Indigo Manza Car bearing temporary registration No.CH-18-(T)-7504, driven by Gurinder Singh @ Sukhwinder Singh and owned by Adesh Welfare Society, Chandigarh.

Counsel for the appellant- insurance company would inform that appeal has been preferred qua the limited issue that the insurance company has been wrongly fastened with liability to pay compensation as there was no concluded contract between the insured and insurer. To bring home his contention, it is argued that the vehicle in question was earlier insured with the appellant vide cover note No.652752 for the period from 30.04.2012 to 29.04.2013. The insured filled the proposal form Ex.R9 for getting the vehicle insured w.e.f. 30.04.2013 to 29.04.2014. He issued cheque No.391541 dated 28.04.2013 for payment of premium of Rs.11,343/- detailed in Ex.R6. It is argued with vehemence that as the insured did not get the vehicle registered after expiry of temporary registration, the insurance company cancelled the cover note Ex.R6 and other three copies Ex.R6/B to R6/D, therefore, there was no concluded contract of insurance between the parties qua the vehicle in question. In addition, it is argued that as per the practice followed by the insurance company, four copies of cover note are prepared. One of the copies is supplied to the insured, another remains in custody of agent of the insurance company and other two copies are kept in the records of insurance company. It is argued that as in the case at hand, all four copies of the cover note were produced by the insurance company and the insured has not produced a copy of cover note, it can safely be inferred that neither the insured was informed of any concluded contract between the parties nor he was supplied with a copy of cover note, therefore, findings of the

Tribunal holding the insurance company liable to pay compensation cannot be allowed to sustain.

Another submission made by counsel is that the insurer did not encash the cheque of premium issued, sufficient to support contention of the insurer that the insurance company never entered into contract of insurance with the insured nor accepted proposal of the insured in view of the particulars supplied in the proposal form Ex.R6.

Counsel for the appellant has also made an attempt to argue that the insured is guilty of supplying incorrect particulars to the registering authority, on the basis whereof got the vehicle registered. For this purpose, he has pointed out towards particulars mentioned in the Screen Report of Vehicle Ex.R10 wherein there is reference to policy No.652752 but its period has been stated to be from 30.06.2012 to 29.06.2013 as against, the earlier policy being effective from 30.04.2012 to midnight of 29.04.2013. As per policy Ex.R12, it also makes reference to cover note No.652752 dated 30/04/2012.

Counsel representing the registered owner/insured of the vehicle has supported findings of the Tribunal whereby all the respondents before the Tribunal have been held jointly and severally liable to pay compensation. It is further argued that in the proposal form Ex.R9 submitted by the insured, there is no mis-statement with regard to the vehicle having temporary number and so also period of previous policy No.652752 due to expire on 29.04.2013. The proposal form is dated 20.04.2013 and in the cover note Ex.R6, there is reference to cheque No.391541 dated 28.04.2013 for payment of premium of Rs.11,343/- . According to counsel, once the insurance company knowing fully well that the vehicle in question had temporary registration and the same was previously insured by the same insurer vide policy which was to expire on 29.04.2013 and thereafter issued the cover note dated 29.04.2013 at 9.45 AM, a concluded contract came into existence between the parties and the insurance company cannot be allowed to escape its liability to indemnify the insured by taking advantage of a unilateral act of cancelling the cover note or its copies without any intimation to the insured with regard to any such cancellation prior to the accident in question that occurred on 30.04.2013. It is further argued that as a matter of fact, there is no evidence as to the date on which the cover note was cancelled by the insurance company when otherwise the cancellation neither bears any date nor the signatures/initials of an authorized representative of the insurance company. The last submission made by counsel is that as the insured had dealt with the company through its authorized agent namely Joshi Auto Ltd., but the insurance company has not examined a witness from Joshi Auto to prove the facts, stated by Balwinder Kumar RW-3.

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

Indisputably, the vehicle in question was insured with the appellant - insurance company w.e.f. 30.04.2012 to 29.04.2013 and at that time, the vehicle had temporary registration No.CH18-(T)-7504. Perusal of Ex.R12 and R6 makes it evident that the vehicle was manufactured in the year 2012 and it was a new vehicle which was insured through Joshi Auto, agent of the insurance company. About 10 days prior to expiry of earlier policy Ex.R12, the insured filled the proposal form Ex.R9 on 20.04.2013 which makes reference to registration particulars of the vehicle, make and model, previous policy and expiry date of previous policy. In the proposal form, there is no reference to issuance of cheque for payment of Rs.11,343/- towards premium, detailed in the proposal form. In Ex.R6, cover note dated 29.04.2013 at 9.45 AM, reference to cheque dated 28.4.2013 of Rs.11,343/- issued by the insured, registration particulars of the vehicle CH18-(T)-7504 as well as period of insurance w.e.f. 30.04.2013 AM to 29.04.2014 after midnight as well as previous policy number and date of its expiry have been duly recorded. Once the insurance company knowing fully well particulars of previous policy issued by the same company and temporary registration number had decided to issue cover note dated 29.04.2013 at 9.45 AM, offer given by the insured to get the vehicle insured stands accepted and turned into a concluded contract between the parties. The mere fact that all copies of cover note were available either with Joshi Autos, agent of the insurance company or with the insurance company itself would not make any difference.

The insurance company has failed to lead any tangible evidence as to the date on which cover note was cancelled. There is nothing on record suggestive of the fact that either the insurance company or Joshi Autos ever sent intimation to the insured with regard to cancellation of cover note. The insurance company has further failed to prove that cheque issued by the insured qua premium was returned on 30.04.2013, the date from which the policy was to come into force as the previous policy was to expire on 29.04.2013. It appears that as the policy was to commence w.e.f. 30.04.2013 and the vehicle in question met with accident on that day, insurance company by taking advantage of being in possession of all the four copies of cover note, made endorsement of cancellation in order to wriggle out of the concluded contract and its liability to pay compensation by way of indemnification of the insured. This act and conduct of insurance company certainly shows that the insurer has not acted in a fair manner rather indulged in malpractice. Practically, most of the business of insurance companies is conducted through their agents and the public rely upon information supplied by agents specially for getting the vehicles insured. If despite discussion made hereinbefore, still plea of insurance company is accepted, it would shake public faith in insurance business through agents and people may decide to make payment of premium only if the agent is authorized to issue cover note/insurance policy immediately on receipt of payment.

To be fair to the appellant, counsel has raised an argument with regard to wrong information supplied by the insured for getting the vehicle registered. It may be true that the insured gave incorrect information qua period of policy No.652752, reflected in the Screen Report of the Vehicle but the said fact is of no consequence for deciding the present controversy. At the cost of repetition, the insured did not make any misrepresentation in the proposal form to give any cause of grievance for the insurance company to express or to make out a ground for cancellation of the cover note.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

MAY 23rd , 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**
Whether speaking/reasoned : yes/no
Whether reportable : yes/no