213

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.9578 of 2014
Date of Decision: 31.10.2018

Mamta and others

Appellants

Versus

Dinesh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ram Kumar Saini, Advocate
for the appellants.

Mr. Sandeep Suri, Advocate
for respondent No.4-Insurance Company.

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<u>AVNEESH JHINGAN, J (Oral) :</u>

The claimants have filed the present appeal against award dated 05.12.2013 passed by the Motor Accident Claims Tribunal, Kurukshetra (for brevity 'the Tribunal').

2. This appeal has been filed by the parents and widow of the deceased-Roshan Lal. The driver; owner and purchaser-cum-owner of the offending vehicle have been arrayed as respondents No.1 to 3 respectively, in this appeal. United India Insurance Company has been arrayed as respondent No.4 in this appeal.

3. The brief facts necessary for adjudication of the case are that on 21.10.2011, Roshan Lal (since deceased) was travelling in a Tractor-Trolley bearing registration No.HNA-3820. The same was being driven by Prithvi Singh. When they reached near grain market

of Gumthala Garhu on Kaithal-Pehowa Road, the offending vehicle bearing registration No. HR-56-7364 lost its control and struck against the Tractor-Trolley. As a result, Roshan Lal fell down and bags of the paddy loaded in the Trolley also fell over him. He suffered grievous injuries. He was shifted to PGI, Chandigarh but he could not survive and died on 19.11.2011. DDR No. 4, dated 24.10.2011 was recorded at Police Station Pehowa. Legal heirs of the deceased filed claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for brevity 'the Act'). The Tribunal after considering the case and appreciating the evidence adduced, awarded a sum of ₹4,85,728/- alongwith interest @ 7.5% per annum. Further it was held that the driver of the offending vehicle was not having valid driving licence at the time of accident, hence, the insurer of the offending vehicle was absolved from the liability to pay compensation.

4. Learned counsel for the appellants has raised only one issue that the insurer of the offending vehicle be directed to pay the compensation and the insurer may recover the same from respondent No.1 to 3.

5. None has appeared on behalf of respondents No.1 to 3 today, in spite of service.

6. Learned counsel for the insurer argued that the driver of offending vehicle was not holding valid driving licence at the time of accident, hence, the insurance company cannot be held liable to pay the compensation.

7. The contention raised by learned counsel for the appellant deserves acceptance.

8. The fact that the offending vehicle was insured with the insurer is not in dispute. The only defence taken by learned counsel for the insurer is that there was a breach of term of policy. In such circumstances the claimants should not be made to run from pillar to post for recovering the compensation. The Insurance Company is granted liberty to recover the compensation from respondents No.1 to 3 but after paying the said amount to the claimants.

9. The Supreme Court in ***Mangla Ram Vs. Oriental Insurance Co. Ltd. and others 2018(5) SCC 656*** following its earlier decision in ***National Insurance Co. Ltd. Vs. Swaran Singh and others (2004) 3 SCC 297*** has held as under:

> *"26. The next question is about the liability of insurer to pay the compensation amount. The Tribunal has absolved the insurance company on the finding that no premium was received by the insurance company nor any insurance policy was ever issued by the insurance company in relation to the offending vehicle. The respondents no.2 and 3 had relied on a Cover Note which according to respondent No.1 – Insurance Company was fraudulently obtained from the then Development Officer, who was later on sacked by respondent No.1 Insurance Company. The possibility of misuse of some cover notes lying with him could not be ruled out. The respondent Nos.2 & 3 have relied on the decision of this Court in Rula (supra). That decision will be of no avail to respondent Nos.2 & 3. In that case, the Court found that the insurance policy was already issued after accepting the cheque; whereas in the present case, the respondent No.1 Insurance Company has been able to show that no payment was received by the*

company towards the insurance premium nor any insurance policy had been issued in respect of the offending vehicle (jeep). However, the claim of respondent Nos.2 & 3 to the extent that they possessed a cover note issued by the then Development Officer of the Oriental Insurance Company (respondent No.1) will have to be accepted coupled with the fact that there is no positive evidence to indicate that the said Cover Note is ante dated. Pertinently, the Cover Note has been issued by the then Development Officer at a point of time when he was still working with respondent No.1 Insurance Company. It must follow that the then Development Officer was acting on behalf of the Insurance Company, even though stricto sensu the respondent No.1 Insurance Company may not be liable to pay any compensation as no insurance policy has been issued in respect of the offending vehicle, much less a valid insurance policy. But for the Cover Note issued by the Development Officer of respondent No.1 Insurance Company at a point of time when he was still working with respondent No.1, to do substantial justice, we may invoke the principle of "pay and recover", as has been enunciated by this Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & Ors., (2004) 3 SCC 297."

10. In view of decision of the Supreme Court, the award dated 05.12.2013 is modified to the extent that the amount awarded by the Tribunal shall be paid by the Insurer and insurance company shall have the right to recover the amount from respondents No.1 to 3.

11. Appeal is disposed of, accordingly.

[AVNEESH JHINGAN]
JUDGE

October 31, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No