

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4102 of 2017 (O&M)

Date of Decision: 21.11.2018

Ravi Kant Raina and another

...Appellants

VERSUS

Nisha Devi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jagjit Singh, Advocate
for the appellants.

SURINDER GUPTA, J.(Oral)

This is appeal filed by driver and owner of the car bearing registration no. JK-08-B-1565 (later referred to as 'the offending vehicle') against award dated 12.05.2015, whereby claimants were allowed a compensation of ₹11,25,000/- and the appellants were held jointly and severally liable to pay amount of compensation for the reason that the offending vehicle was not insured on the day of accident. Observations of the Motor Accident Claims Tribunal, Pathankot (later referred to as 'the Tribunal') to this effect contained in para 18 of the Award are reproduced as follows:-

“18. During the trial an application was moved by respondent insurance company for directing respondents no. 1 and 2 to produce the original of such unauthentic Photostat copy placed on record. In reply to that application respondent no. 2 submitted that the original was attached with the criminal file of FIR Ex.P.119 pending in the Court of Chief Judicial

Magistrate Pathankot. In order to appreciate such submission the said file was summoned from the Court of CJM Pathankot. It was perused but the original was not found there from which it is made out that there is no such original of such unauthentic Photostat copy of cover note. Even that file also contained a Photostat copy. It seems that such Photostat copy has been fabricated and that is why respondents no. 1 and 2 have shied to tender such Photostat copy in evidence and marked it as Ex.R1 even before producing it at their own level. On the other hand RW1 Janak Raj AO National Insurance Company Limited Pathankot has stepped into the witness and categorically deposed on oath that infact such vehicle was insured vide policy Ex.R1 which covers the period from 25.01.2012 to 24.01.2013. Neeraj Gupta, who allegedly was the agent , has not been examined by the respondents no. 1 and 2. He was the best available witness with them to prove that the premium was paid and cover note was issued by him in their favour. It is therefore held that the respondent no. 2 has miserably failed to prove that such vehicle was insured with respondent no.3 at the time of accident. Therefore respondent no. 3 is not liable to pay any part of compensation.”

2. Learned counsel for appellants submits that appellants have placed on file photocopy of the cover-note dated 15.04.2015 as Ex. R-1 as

per which the offending vehicle was insured but that cover-note was discarded by the Tribunal.

3. The Tribunal has taken note of document placed or inserted in file as Ex. R1. It is cover-note dated 15.04.2015. Original of this document was not produced. In para 17 of the award Tribunal has observed about insurance of offending vehicle as follows:-

“17. So far as the liability of respondent no. 3 is concerned, it was denied by respondent no. 3 that the Car in question was insured with it at the time of accident. So onus was heavy upon respondent no. 2 to prove that such Car was insured with respondent no. 3 at the time of accident. In order to prove such fact the respondent no. 2 has examined respondent no. 1 Ravi Kant Raina (RW2) who deposed that such Car was insured and insurance cover note from 25.01.2014 to 24.01.2015 was issued. Such Car was got insured through Neeraj Gupta agent of respondent no.3 and the premium was paid to Neeraj Gupta but when asked as to whether he received the receipt regarding making payment to Neeraj Gupta, his reply was in negative. He was also asked to reply as to whether he had seen any document with Neeraj Gupta for ascertaining his authority as agent here again his reply was in negative. When asked as to whether he went to the office of insurance company Kathua to receive the policy here again his reply was in negative. Neither the original insurance cover note nor any original policy

has been placed on record. Only a Photostat copy of cover note has been brought on record from the side of respondent no.2. It is very astonishing and surprising as to how such Photostat copy of the cover note has been shown as Ex.R1 with a date 15.04.2015 when actually it was neither tendered into evidence by respondents no. 1 and 2 nor it was put to any any witness whereas the actual insurance policy Ex.R1 is an attested copy of another cover note which was tendered by RW1 Janak Raj A.O., according to which the vehicle was insured only upto 25.01.2012 to mid night 24.02.2013. This document, which is Photostat copy and is wrongly and illegally shown as Ex.R1 without signatures of this Tribunal and that too with date 15.04.2015 when the case was not fixed for that day, seems to be a handiwork of some mischievous element. Such conduct of respondents no. 1 and 2 inserting such kind of unauthentic and unproved document to show the insurance of the vehicle during the period of accident is further condemnable.”

4. Learned counsel for appellants has though not conceded but could not point out to any document or evidence produced on record by the appellants to show that the offending vehicle was insured on the date of accident so as to make respondent no. 6-Insurance Company liable to pay amount of compensation. He could not even refer to any photocopy of cover-note, which may refer to valid insurance of the offending vehicle on

the day of accident or to get such cover-note verified from the insurance company.

4. In view of above facts, I find no legal or factual infirmity in the award passed by the Tribunal.

5. This appeal has no merit and the same is dismissed.

6. There is delay of 538 days in filing the present appeal.

7. Learned counsel for appellants submits that after decision of claim petition by the Tribunal, counsel for appellants has not intimated them about the award. They came to know of the award only after filing of the execution application.

8. As the appeal (FAO-4102-2017) has been dismissed on merit, the issue of condonation of delay is of academic importance. In view of submission of learned counsel for appellants, application (CM-13117-CII-2017) is allowed and delay of 538 days in filing the appeal is condoned.

November 21, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No