IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.5661 of 2018 (O&M)
Date of Decision: 07.09.2018

Oriental Insurance Company Limited

... Appellant

Versus

Bhajan Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ram Avtar, Advocate,
for the appellant.

Mr. Munish Gupta, Advocate and
Mr. Nirbhai Singh Gill, Advocate,
for the caveator/claimants.

TEJINDER SINGH DHINDSA, J.

A claim petition filed under Section 166 of the Motor Vehicles Act stands dealt with by the Motor Accident Claims Tribunal, Hoshiarpur vide award dated 19.03.2018 and whereby the total compensation amount of Rs.8,44,000/- has been awarded in favour of the claimants on account of death of Bhajan Singh in a motor vehicle accident that took place on 02.02.2016. Tribunal has directed that the compensation amount at the first instance has to be paid by the Insurance Company and which would have a right to recover the same from the owner of the offending vehicle.

Instant appeal is at the hands of the Oriental Insurance Company Limited assailing the award dated 19.03.2018 whereby the liability of the compensation amount has been fastened against the appellant Insurance Company in the first instance.

Counsel would submit that policy bearing No.235403/31/2016/05241 was issued by the Branch Office, Mahilpur covering the risk of the offending vehicle i.e. bus bearing registration No.HP-19-D-7215 for the period from 26.11.2015 to 25.11.2016 and the premium was paid by the owner of the vehicle through cheque. However, the cheque having been presented in the bank was dishonored on account of "insufficient funds" on 04.12.2015 i.e. much prior to the accident in question which took place on 02.02.2016. Further submitted that owner of the vehicle was duly informed as regards cancellation of the insurance policy vide registered AD post on 07.12.2015 and to substantiate such plea before the Tribunal, the appellant Insurance Company had examined Parminder Pal Singh Jaswal, Branch Manager, Mahilpur who had stepped into the witness box as RW-5 and had deposed that the cheque towards insurance premium issued by the owner of the offending vehicle had bounced due to "insufficient funds" and the Branch Office had immediately cancelled the insurance policy and informed the owner of the vehicle by registered post on 07.12.2015 much prior to the date of accident.

It is vehemently contended that under such circumstances, the Tribunal has erred in fastening the liability of paying the compensation amount against the appellant Insurance Company.

Counsel for the appellant has been heard at length.

Brief factual matrix is that in the claim petition that had been filed at the hands of widow, son and daughter of deceased Bhajan Singh, it had been averred that on 02.02.2016 Bhajan Singh and his brother Baldev Singh were proceeding on separate bicycles in connection with some personal work. At about 7 p.m., a bus bearing registration No. HP-19-D-7215 being driven by Naresh Kumar at a high speed came from the opposite side and struck against the bicycle of Bhajan Singh and who resultantly suffered fatal injuries. FIR No.14 dated 03.02.2016, under Sections 279, 304-A and 427 of IPC was registered against the driver of the offending vehicle at Police Station Hariana, District Hoshiarpur on the statement of Baldev Singh who was an eyewitness to the accident.

Claim petition having been contested, the Tribunal has passed an award dated 19.03.2018 awarding a total compensation amount of Rs.8,44,000/- in favour of the claimants along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

As against the contentions raised by counsel for the appellant and which have been noticed hereinabove, the issue framed by the Tribunal which would be relevant for the controversy at hand would be issue No.3 and which was in the following terms:

> ***"Whether the offending bus No. HP-79-D-7215 was duly insured with the Insurance Company? OPR (1 and 2)"***

The factual premise as regards accident having been taken place on 02.02.2016 is not in dispute. It is also not in dispute that the cheque issued by the owner of the offending vehicle towards insurance premium (Ex. R-2 issued on 26.11.2015) was returned due to "insufficient funds" vide "return memo" issued by the Punjab National Bank (Ex.R-6).

The moot question that arises for consideration in this appeal is as to whether Insurance Company had discharged its obligation of having informed the owner as well as the concerned registering authority about dishonor of cheque and the cancellation of insurance policy.

In the written statement that the Insurance Company had filed in response to the claim petition, the plea taken was that intimation of cancellation of the insurance policy had been given to respondent No.2 i.e. owner of the offending vehicle vide registered post on 07.12.2015. Copy of the letter of cancellation was placed on record as Ex.R-7.

However, counsel for the appellant does not dispute that the Insurance Company did not place on record the postal receipts issued by the postal authorities qua sending of the original of Ex.R-7 to respondent No.2 through registered post. Even the register where an entry of the said letter had been incorporated in the records of the Insurance Company in token of the intimation of cancellation having been sent was not produced before the Tribunal.

It would be apposite to take note that RW-5 Parminder Pal Singh Jaswal in his deposition before the Tribunal admitted that the he had not brought the original postal receipt with regard to the letter of cancellation Ex. R-7. Rather an explanation was sought to be given that as per guidelines of the Insurance Company, the same had been destroyed. Even such guidelines did not see the light of the day.

Further more. it was the stand of the Insurance Company that vide Ex. R-8, intimation had also been given to the competent authority i.e. District Transport Officer, Hoshiarpur as regards cancellation of the insurance policy pertaining to the offending vehicle. In this regard, the Tribunal upon due appreciation of evidence/documents adduced on record has concluded that the particulars of the addressee of the letter/communication Ex.R-8 were only mentioned as "Dept. Motor". No evidence was adduced to demonstrate that the letter of cancellation of the insurance policy was in fact posted to the District Transport Officer, Hoshiarpur. Even though the appellant Insurance Company claimed that such letter/communication had been sent through registered post yet no postal receipt in such regard had been placed on record. Even the despatch register carrying the entry pertaining to letter/communication (Ex. R-8) had not been placed on record.

It is by now well settled that if intimation of cancellation of the insurance policy due to dishonor of the cheque issued towards premium is not given to the owner of the vehicle as well as to the Transport Department, the amount of compensation has to be paid by the concerned Insurance Company and which would then have the rights to recover the same from the owner.

Sequely, in the eventuality of cancellation of insurance policy for non-payment of premium, the Insurance Company would not be liable to satisfy the claimant if the concerned had been intimated about the cancellation of the insurance policy.

Adverting back to the facts and circumstances of the present case, the Tribunal upon due appreciation of evidence has recorded a finding that the appellant Insurance Company has miserably failed to prove on record that the Insurance Company had intimated the owner with regard to cancellation of policy prior to the date of accident.

Under such circumstances, no patent infirmity or perversity is found with a view taken by the Tribunal wherein the liability to pay the compensation amount has been fastened upon the appellant Insurance Company in the first instance and recovery rights have been granted to recover the same from the owner of the offending vehicle.

The instant appeal is without merit and is dismissed.

07.09.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes