IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

244 FAO No.8548 of 2017 (O&M)
Date of decision: 26.09.2018

RASHID ... Appellant

Versus

MOHIT AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Munfaid Khan, Advocate for the appellant.

Mr. Gopal Mittal, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

CM-27921-CII-2017

Prayer in this application is for condoning delay of 781 days in filing the appeal.

Counsel for the applicant-appellant would urge that as the applicant was given an impression that liability to pay compensation would be that of the insurance company and he came to know about recovery right given in favour of the insurer on 15.12.2017 when notice of execution petition was received by him, delay in filing the appeal is neither intentional nor mala fide and the same may be condoned.

Another submission made by counsel is that due to delay in filing the appeal, no third party rights have been created when otherwise the meritorious claim may not be rejected at the threshold on technical considerations.

The insurance company has not filed any response to controvert the averments raised in para 2 of the application.

I have heard counsel for the applicant, perused the averments raised in the application supported by an affidavit of applicant/appellant.

There is nothing on record suggestive of the fact that the applicant gained in any manner by delaying filing of the appeal. As per the settled position in law, the Court has to adopt liberal and pragmatic approach while dealing with the issue of condonation of delay. That being so, in my considered opinion, there are sufficient grounds for condoning delay in filing the appeal and accordingly, the application for condonation of delay is allowed and delay of 781 days in filing the appeal stands condoned.

Main case

Rashid, the registered owner of offending vehicle No.RJ-05RB-1682 has filed the appeal to assail findings of the Tribunal whereby the insurance company has been given right of recovery against the insured and driver of offending vehicle after payment of compensation to the claimants.

The Tribunal, in para 11 of the award, has noticed that driver was possessing licence to drive motorcycle, scooter, car and jeep but at the time of accident he was driving the tractor, therefore, the insured is guilty of violating terms and conditions of the insurance policy which entitle the insurance company to have right of recovery against respondents No.1 and 2 before the Tribunal.

Findings of the Tribunal allowing right of recovery in favour of the insurer and against driver of the offending vehicle cannot be allowed to sustain as there is no privity of contract between the insurer and driver. Accordingly, right of recovery given to the insurer against driver is set aside.

Indisputably, the driver had a licence authorising him to drive motorcycle, scooter, car and jeep. The offending vehicle is a tractor that falls within the definition of LMV under Section 2(21) of the Motor Vehicles Act, 1988. There is nothing on record suggestive of the fact that mechanism of tractor is different from that of car or jeep. When the case is examined in the light of judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731**, it is difficult to sustain findings of the Tribunal that driver of offending vehicle was not possessing a licence authorising him to drive the vehicle in question or the insured is guilty of violating terms and conditions of the insurance policy. That being so, right of recovery given to the insurance company against the insured is also liable to be set aside.

For the foregoing reasons, the appeal is partly allowed. The driver, owner and insurer shall be jointly and severally liable to pay compensation to the claimant. The insurance company shall have no right of recovery against the insured or driver of the offending vehicle.

26.09.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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