

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No. 121 of 2018 (O&M) in
CWP No. 25973 of 2013
Date of decision: 23.1.2018

National Insurance Company Limited and another

.. Appellants

v.

Ashok Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B. S. WALIA

Present: Mr. Nitin Gupta, Advocate for the appellants.

...

Rajesh Bindal J.

The order passed by the learned Single Judge accepting the writ petition filed by the owner of the vehicle, whose claim for insurance was declined for the reason that the policy had been got cancelled by the financier, has been impugned in the present intra-court appeal.

Briefly, the facts are that respondent No. 1 purchased a vehicle bearing registration No. HR-39D-5141, which was got financed from Magma Finance Company (respondent No. 2). The vehicle was insured by

the appellant from 17.11.2005 to 16.11.2006. Premium of ₹ 18,599/- was

paid by the financier to the appellant-Insurance Company. Amount was debited in the account of the insured. The vehicle met with an accident on 11.9.2006. The surveyor assessed the loss at ₹ 8,50,000/-. The damaged vehicle was sold as scrap for ₹ 1,90,000/-. As the insurance claim was not settled, respondent No. 1 filed application before Permanent Lok Adalat (Public Utility Service), Hisar, which was dismissed. The order was challenged by filing the writ petition, which was allowed.

Learned counsel for the appellant submitted that the financier, who had paid the premium on behalf of the insured, having got the insurance policy cancelled, the amount of premium was refunded to him on 3.4.2006 and thereafter, there was no policy in existence. It was the duty of the financier to have informed the insured. The Insurance Company cannot be said to be at fault. The insurance claim was rightly rejected.

After hearing learned counsel for the appellant, we do not find any merit in the submissions made. The issue has been considered by the learned Single Judge while directing the Insurance Company to make good the loss suffered by the insured/respondent No. 1. Liberty has been granted to claim the amount from the financier. General Rule 24 of the Indian Motor Tariff, providing for cancellation of the insurance policy, has been referred to, which clearly provides that the policy can be cancelled at the option of the insured. Relevant part of the Rule is extracted below:

“GR.24. Cancellation of Insurance and Double Insurance

A Cancellation of Insurance

- (a) A policy may be cancelled by the insurer by sending to the insured seven days notice of cancellation by recorded delivery to the insured's last known address and the

insurer will refund to the insured the pro-rata premium for the balance period of the policy.

- (b) A policy may be cancelled at the option of the insured with seven days notice of cancellation and the insurer will be entitled to retain premium on short period scale of rates for the period for which the cover has been in existence prior to the cancellation of the policy. The balance premium, if any, will be refundable to the insured. Refund of premium will be subject to
 - i) there being no claim under the policy, and
 - ii) the retention of minimum premium as specified in the Tariff.
- (c) A policy can be cancelled only after ensuring that the vehicle is insured elsewhere, at least for Liability Only cover and after surrender of the original Certificate of Insurance for cancellation.
- (d) Insurer should inform the Regional Transport Authority (RTA) concerned by recorded delivery about such cancellation of insurance.”

The aforesaid Rule does not provide that the policy can be cancelled on a request made by the financier of the vehicle. In the case in hand, undisputedly there is nothing on record to suggest that any request was made by the insured to cancel the policy. The aforesaid Rule further provides that the policy can be cancelled after ensuring that the vehicle is insured elsewhere, at least for Liability Only cover. It is not in dispute that the Insurance Company had not verified that the vehicle in question has

been insured with any other Company and the policy was cancelled only on the request of the financier.

For the reasons mentioned above, we do not find any merit in the present appeal. Accordingly, the same is dismissed. Consequently, the application for condonation of delay in re-filing the appeal is also dismissed.

(Rajesh Bindal)
Judge

(B. S. Walia)
Judge

23.1.2018
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No