**420**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**RSA No. 1815 of 1988(O&M)**
**Date of decision : 01.05.2019**

**Dilbagh Rai Bansal** **....... Appellant**

**versus**

**Divisional Manager, New India Assurance Co.Ltd and another** **...... Respondents**

**CORAM : HON'BLE MR. JUSTICE AMIT RAWAL**

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Present: Mr. Deepak Gupta, Advocate for the appellant.

Mr.Neeraj Khanna, Advocate
for Mr.Deepak Suri, Advocate for the respondents.

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**AMIT RAWAL, J. (ORAL)**

This Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court whereby the suit of the appellant-plaintiff for recovery of an amount of Rs. 60,000/-decreed by the trial Court to the tune of Rs. 52,000/- as compensation for loss of vehicle bearing registration No. PBI-388 Model 1980, was dismissed with costs. The appellant-plaintiff asserted that he had got the car insured with New India Assurance Company Limited vide policy dated 14.08.1980 bearing No. 991613/671 for a sum of Rs. 60,000/- which was valid up to 13.08.1981. However, on the intervening night of 26/27.08.1980 the car was stolen and report of theft resulted into registration of the FIR. The claim was lodged with the insurance company but the company did not honour the same and thus the plaintiff-appellant was constrained to file the suit for recovery against it.

The defendant opposed the suit and denied the theft of the vehicle and alleged that there was concealment of procurement of an amount of Rs. 30,000/- as loan was obtained from Punjab and Sind Bank and it was intimated to the bank that the said car would be plied as a taxi. Previously the said car was insured with Oriental Fire & General Insurance Company Limited on 05.03.1980 as a taxi with a comprehensive insurance. Subsequently the plaintiff got registered the car as a private car and fraudulently took policy from the defendants when this car was insured as taxi with the aforesaid insurance company which was stolen before 14.08.1980 and thus was not entitled to any claim.

In support of the aforementioned evidence the plaintiff brought on record the policy receipt, particulars of the vehicle, FIR etc. whereas the defendants also led evidence and examined D.L.Batra as DW1, Harmesh Singh, Official of Punjab and Sind Bank as DW2 and Branch Manager Gopal Krishan Singla as DW3. On the basis of evidence led, the trial Court decreed the suit for recovery of Rs. 52,000/-. The defendants preferred an appeal and the Lower Appellate Court dismissed the suit. In this manner the plaintiff approached before this Court in Regular Second Appeal.

Learned counsel appearing on behalf of the appellants submitted that the reasoning assigned by the Lower Appellate Court by accepting the testimony of DW2 Harmesh Singh with regard to the insurance subsequent to the theft is neither here nor there as no copy of the insurance had seen the light of the day. The said findings are based on conjectures and surmises. It is not necessary that even if the car was purchased for the care of the father the same cannot be used by the son. FIR is the testimony of the theft. Learned counsel prayed for setting aside of the judgment and decree of the Lower Appellate Court for the same suffering from gross illegality and perversity.

On the other hand Mr.Neeraj Khanna, learned counsel for the respondents submitted that no suggestion was put to DW2 who not only stated regarding the subsequent insurance from 05.03.1980 to 04.03.1981 of the car as a taxi and cover note of 127712 and with the United India Insurance Company, post theft. Lower Appellate Court being last Court of fact examined each and every document. No police officer was also examined with regard to the investigation except with regard to the contents of the FIR, thus prayed for upholding the judgment and decree of the Lower Appellate Court and dismissal of the appeal.

I have heard learned counsel for the parties and perused the paper book and the following Substantial Question of Law arises:

> "As to whether judgment and decree of the Lower Appellate Court suffer from illegalities and perversities while setting aside the judgment and decree of the trial Court?"

am of the view that it does not, for, simple reason that the plaintiff has not been able to ask any question to DW2 who in the examination-in-chief submitted that car was insured with the Oriental Insurance company w.e.f. 05.03.1980 to 04.03.1981, as taxi, vide cover note dated 05.03.1980 bearing No.127712 and again insured as a taxi for the period 11.05.1982 to 10.05.1983 vide cover note No. 461982. The loan amount was not fully adjusted in their record and it was shown to be plied as a taxi. From the tenor and mode of the cross-examination no such suggestion was made with regard to the availability of the cover note No.461982 issued for the period 11.05.1982 to 10.05.1983 i.e. post theft. It is pertinent to mention here that during the subsistence of the policy for the period 05.03.1980 to 04.03.1981, the appellant again got the car insured for the period 14.08.1980 to 13.08.1981 with the respondent-company as a private car. It is inexplicable as to why the appellant-plaintiff purchased two insurance policies for the same vehicle from two different insurance companies especially when the first insurance policy had not yet expired. Two insurance policies of the same vehicle cannot be allowed at the same time. It is also unimaginable that the vehicle which as per the pleadings of plaintiff-appellant was stolen on 26/27.08.1980, can be got insured on 14.08.1981. It casts a doubt on the genuineness of the claim particularly for the period when the theft had taken place. Appellant-plaintiff has not been able to rebut the direct and cogent evidence of the defendants in view of the stand taken in the written statement by leading evidence in the affirmative what to talk of any additional evidence or directions of the Court for rebuttal evidence. No ground for interference in the judgment and decree of the Lower Appellate Court is made out and the substantial question of law answered in favour of respondent-defendant and against appellant-plaintiff .

Appeal is dismissed.

**(AMIT RAWAL)**
**JUDGE**

**01.05.2019**
**sunita**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No