IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1800-1997(O&M)
Date of decision: 11.02.2019

National Insurance Company Ltd.

… Appellant

Versus

Manju Devi and others

… Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

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

***

KRISHNA MURARI, C.J. (Oral)

This FAO under Section 173 of the Motor Vehicles Act is directed against the award dated 06.11.1996 passed by Motor Accident Claims Tribunal awarding a sum of Rs.1,50,000/- as compensation along with interest @ 12% per annum from the date of filing of the petition till realization of the amount from the owners of offending vehicle as well as the appellant National Insurance Company.

An accident is alleged to have taken place on 25.09.1994 when the claimant (respondent No.5 herein) along with certain other persons were travelling in an auto rickshaw, when the same was hit by a truck bearing registration No.JK-01-A-4960, being driven rashly and negligently by respondent No.4. As a result of accident, the claimant (respondent No.5

herein) suffered a fracture in his left leg and other passengers also received grievous injuries. The proceedings were contested by the National Insurance Company by filing a written statement denying the allegations made in the claim petitions. Following issues were framed by the Tribunal for adjudication:

> "1. Whether the accident in question occurred due to rash and negligent driving of Abdul Rasid, causing death of Ravinder Mathur and injuries to claimant Mahesh? OPP.
>
> 2. If issue No.1 is proved, then to what amount of compensation, the claimants of both the claim petitions are entitled to receive and from whom? OPP.
>
> 3. Whether the vehicle in question was being driven by a person not holding valid/effective driving licence? OPR insurance company.
>
> 4. Whether no policy was subsisting at the time of accident? OPR insurance company.
>
> 5. Relief."

Both the parties led their oral as well as documentary evidence. On an analysis, the Tribunal has returned a finding that the accident was a result of rash and negligent driving by the driver of the offending truck. Insofar as, with respect to offending vehicle being insured, and whether any policy was subsisting at the time of accident, the Tribunal on the basis of the evidence brought on record has returned a finding that the policy of the truck was to expire on 07.06.1994 and was to be renewed on 07.06.1995 (08.06.1994?). A renewal reminder was issued on 06.06.1994 on which it was mentioned "Renewed for the year 1994-95". No separate insurance cover or policy was supplied by the owner. The owner himself set up a case before the Tribunal that the National Insurance Company renewed the policy for the period 08.06.1994 to 07.06.1995. The Tribunal also records that the insurance company was granted time to locate the person, who could produce the original letter of this renewal reminder and could depose whether such renewal was carried out or not. However, a letter of Senior Divisional Manager of the Insurance Company was produced, wherein it was mentioned that the efforts were made to ascertain whether the policy issued by the New India Policy was renewed by the National Insurance Company – the appellant herein.

Learned counsel for the appellant submits that it is a case where no insurance policy was in existence, hence, the claim could not be allowed.

We have considered the arguments advanced by learned counsel for the appellant and perused the record.

The matter with respect to the renewal of the insurance policy was between the insured and the insurer. The owner of the offending vehicle produced primary evidence to demonstrate that a renewal had taken place. It was for him to have produced the policy, if any, issued by the insurance company and the onus was on the insurance company to demonstrate that the insurance policy was never renewed.

In case, learned counsel for the appellant has any doubt in this regard, the third party, who is to be indemnified, cannot be allowed to suffer. And in the circumstances, insurance company instead of filing an appeal for a meager amount of Rs.1,50,000/- ought to have satisfied the award and recover the same from the owner. We see no good ground for us to interfere in the award in exercise of appellate power, particularly when the insurance company failed to establish before the Tribunal that insurance policy was either not renewed or was not in existence. In either contingency, it is always open to the insurance company to recover the amount paid to the claimant, from the owner in appropriate proceedings on establishing the fact about non-existence of a valid policy.

In view of the above facts and discussion, we do not find any force in this appeal and the same accordingly stands dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

11.02.2019
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO