

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

RSA-2884-2002(O&M)

Date of decision:-23.9.2019

National Insurance Company Ltd.

...Appellant

Versus

Pepsu Road Transport Corporation, Patiala

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Neeraj Khanna, Advocate
for the appellant.

Mr.Anupam Singla Advocate
for respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that bus No.PJG-7113 belonging to Pepsu Road Transport Corporation, Patiala (hereinafter referred to as PRTC, Patiala) driven by Mohabat Singh was involved in a road side accident, which took place on 6.12.1989, resulting in death of Darshan Singh. Legal representatives of Darshan Singh deceased had brought a claim petition against Mohabat Singh –

driver and PRTC, Patiala – owner of the bus before Motor Accidents Claims Tribunal, Barnala. The claimants had not impleaded National Insurance Company Ltd., Chandigarh with which the bus was insured at the relevant time i.e. from 28.7.89 to 27.7.90. The claim petition was accepted by Motor Accidents Claims Tribunal, Barnala and compensation of Rs.1,51,200 along with 12% interest from the date of filing of the claim petition till realization was awarded. PRTC, Patiala paid the compensation. Thereafter, PRTC had wrote a letter to insurance company informing that it had deposited a sum of Rs.1,75,867/- with up to date interest and cost on 22.1.1993 with the Tribunal and the said amount be paid to it by the insurance company alongwith interest. When the amount was not deposited, then the plaintiff filed a suit for recovery of Rs.2,49,076/- i.e. principal amount of Rs.2,00,867/- with interest @ Rs.18% from 22.1.1993 to 22.5.1994 against the National Insurance Company.

On getting notice of the suit, the defendant insurance company put in appearance and filed written statement contesting the suit taking up various legal objections that the suit was time barred; that the Civil Court did not have jurisdiction to entertain and try the suit etc. On merits, the defendant denied its liability to pay any compensation contending that PRTC, Patiala had not filed any application before MACT, Barnala for impleading insurance company as a respondent, resultantly it did not have any notice of

pendency of the claim petition; that PRTC, Patiala had not filed any appeal against the award and had not given any notice to the insurance company after passing of the award, therefore, the insurance company was not liable to make any payment to the plaintiff. In the end, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to recover the suit amount alongwith interest at the rate of 18% P.A.? OPP.
2. Whether civil Court has got no jurisdiction to try the suit and Tribunal, Motor Vehicles Act is only competent to try the present suit? OPP.
3. Whether the suit is time barred? OPD.
4. Whether this Court has no territorial jurisdiction? OPD.
5. Relief.

Both the parties are afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 3 in favour of the plaintiff and against defendant, issues No.2 and 4 were also decided against the defendant. Resultantly, the suit of the plaintiff was decreed for recovery of Rs.2,49,076/- with future interest and cost. This was so done vide judgment and decree dated 17.9.1999.

The defendant felt aggrieved by the said judgment and decree passed by the trial Court and challenged the same by way of filing an appeal before District Judge, Patiala. However, the said appeal was dismissed vide judgment and decree dated 31.10.2001.

Still feeling dissatisfied, the defendant insurance company has filed the present Regular Second Appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

In the present case it is not disputed by the appellant insurance company that bus in question, which had met with an accident was insured with it at the relevant time. As such a valid contract of indemnity/insurance was in existence between the parties. The said agreement covered risk to the third party and the bus as well as that of driver, conductor and passengers travelling in the bus. The Tribunal had passed the award against the driver and owner of the bus. No efforts seems to have been made by legal heirs of the deceased, who were claimants before the Tribunal to implead the insurance company and Tribunal itself does not seem to have made inquiry as to whether the bus in question was insured with any insurance company or not. Similarly no application was moved for impleading the insurance company came from PRTC side. Does it

mean that now PRTC, Patiala is debarred from recovering the amount paid by it to the claimants under the award, the answer can certainly be not in affirmative. As it comes out from the record after passing of award, plaintiff PRTC, Patiala had called upon defendant insurance company to deposit the amount of compensation awarded by MACT, Barnala but it was not so done by the insurance company. The trial Court has referred to judgment by Hon'ble High Court passed in case titled as *Sheo Prasad Tewari Vs. District Judge, Fatehpur and others, AIR 1985, Allahabad 354*, wherein it was observed that notice of proceedings to the insurance company can be issued even subsequent to the award. The trial Court found that the suit was within limitation, as such decreed the suit.

Learned District Judge, Patiala while dismissing the appeal and affirming the judgment and decree passed by the trial Court has observed that award was passed by MACT, Barnala on 10.9.1992 to the tune of Rs.1,51,200/- with interest @ 12% per annum and execution proceedings were pending before that Tribunal for 06.1.1993 but no action was taken by defendant – insurance company, as a result plaintiff PRTC, Patiala was required to deposit a sum of Rs.1,75,867/- before the Tribunal, in addition to Rs.25,000/- already deposited regarding which the plaintiff PRTC, Patiala informed the defendant insurance company vide letter dated 16.7.1993 Ex.P3 and defendant insurance company was required to

reimburse the said amount to plaintiff PRTC. Learned District Judge, Patiala in light of Section 96(2) of the Motor Vehicles Act, 1939 (Equivalent to Section 149 of the Motor Vehicles Act, 1988, interpreted by Allahabad High Court in judgment *Sheo Parsad's* case (supra) had also concluded that notice could be given after passing of the award and defendant insurance company could not escape its liability to reimburse the plaintiff corporation for the amount of compensation paid by it relating to an accident caused by one of its bus, which was insured with the said insurance company. It was observed that the defendant insurance company had not examined any witness in support of its contentions. Resultantly, the appeal was dismissed by the District Judge, Patiala.

No substantial question of law comes out to be there.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

23.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No