

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

RSA-2204-2001(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.PB-11/9277 belonging to Pepsu Road Transport Corporation, Patiala (hereinafter referred to as PRTC, Patiala) driven by Kuldeep Singh was involved in a road side accident, which took place on 15.6.1991, resulting in death of Bachan Lal. Legal representatives of Bachan Lal deceased had brought a claim petition against Kuldeep Singh – driver and PRTC, Patiala – owner of the bus before Motor Accidents

Claims Tribunal, Kurukshetra. 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, Kurukshetra vide award dated 19.11.1991 and compensation of Rs.1,44,000/- along with 12% interest from the date of filing of the claim petition till realization was awarded. PRTC, Patiala was proceeded against ex-parte in those proceedings.

PRTC, Patiala paid the compensation of Rs.1,84,274/- on dated 2.12.1993. A legal notice was sent by PRTC, Patiala to the defendant company to pay Rs.1,84,274/-, which it had paid to the claimants. When the amount was not deposited/paid, then the plaintiff filed a suit for recovery of Rs.1,98,094/- against the National Insurance Company.

On getting notice of the suit, the defendant insurance company put in appearance and filed written statement raising preliminary objections with regard to jurisdiction of the Civil Court to try the suit contending that suit was time barred. On merits, the defendant admitted that plaintiff had insured 1048 buses of corporation under the policy and provisions of Motor Vehicles Act. The defendant denied receipt of letter dated 19.10.1988 contending that the insurance policy had been issued. However, the plaintiff was not entitled for reimbursement because under the procedure, they had

to appear before the MACT, Kurukshetra and offer a contest; furthermore award was not passed against the insurance company, so the insurance company was not bound to deposit the amount of award and that the plaintiff had violated the terms and conditions of the insurance policy. In the end, the defendant prayed for dismissal of the suit.

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

1. Whether plaintiff is entitled to recover the suit amount? OPP.
2. Whether Civil Court has got no jurisdiction to try the suit?
OPD.
3. Whether suit is time barred? OPD.
4. Relief.

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

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff and in favour of the defendant, issue No.2 against the defendant and in favour of the plaintiff, issue No.3 against the defendant and in favour of the plaintiff. Resultantly, the suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 4.8.1997.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge,

Patiala, who vide judgment and decree dated 31.8.2000 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for recovery of amount of Rs.1,98,094/- with future interest @ 6% from the date of filing of suit till realization.

Now it was turn of the defendant to feel dissatisfied and it had filed the present regular second appeal before this Court, notice of which was issued to the respondent/plaintiff, who appeared through counsel.

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

A perusal of the judgment and decree passed by the trial Court goes to show that the trial Court while dismissing the suit filed by the plaintiff was influenced by the fact that the plaintiff had failed to produce any witness to show that bus driver was having a valid driving licence; the driver possessing a valid driving licence was a condition of the policy and further the fact that plaintiff had not filed any application to set aside the ex parte proceedings and further had not filed any appeal before this Court, which goes against its case and the plaintiff was not entitled to get reimbursement on account of violation of terms and conditions of the insurance policy. Such conclusion drawn by the trial Court was erroneous and not sustainable.

That wrong was rightly rectified by learned District Judge, Patiala by way of setting aside the judgment and decree passed by the trial Court and decreeing the suit instituted by the plaintiff. Learned District Judge, Patiala has observed that it was very surprising to note that the defendant insurance company in its written statement even denied those facts, which were patently true and were patently admitted by it to be true like plaintiff PRTC, Patiala suing through Managing Director when defendant insurance company itself had been addressing its letters to plaintiff PRTC, Patiala through its Managing Director. Furthermore, the defendant company had denied happening of the accident even involving bus No.PB-11/9277 or any claim petition having been filed before MACT, Kurukshetra or award of Rs.1.44 lakhs having been passed by the Tribunal.

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 Prasad Tewari Vs. District Judge, Fatehpur and others, AIR 1985, Allahabad 354** 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 buses, 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.

While dealing with the reasoning given by the trial Court for dismissal of the suit of the plaintiff, learned District Judge, Patiala had observed that the defendant company in the written statement had not taken up plea that Kuldeep Singh driver was not having a valid driving licence at the time of accident, it looked improbable that the plaintiff corporation whose main business is transportation of passengers throughout the Punjab and outside, which has got a large fleet of buses, employees drivers, who are not licenced, as such it was for the defendant insurance company to prove that Kuldeep Singh was not having a valid licence and if the defendant company did not get any opportunity to take this plea before Motor Accidents Claims Tribunal, Kurukshetra, it could have taken the plea before the Civil Court and could have proved that Kuldeep Singh driver was not holding a driving licence on 15.6.1991 when he had caused the accident. It has further been observed that defendant company had denied those facts which were patently true to their knowledge and failed to plead these which were available to them and which it was bound to plead before succeeding. Therefore, the reasoning given by the trial Court in that regard was erroneous.

I find that the judgment passed by the trial Court showed lack of application of judicious mind and inability to analyze the

factual and judicial position properly, whereas judgment passed by learned District Judge, Patiala is well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

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 judgment passed by the Additional District Judge, Patiala.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

23.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No