209

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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FAO No.3861 of 2015 (O&M)
Date of Decision: 17.01.2019

IFFCO TOKIO General Insurance Company Ltd.

Appellant

Versus

Sushil Kumar and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh Bansal, Advocate
for the appellant.

Mr. Pankaj Maini, Advocate
for respondent No.1.

Ms. Manpreet Kaur, Advocate for
Mr. Jainainder Saini, Advocate
for respondents No.2 and 3.

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AVNEESH JHINGAN, J (Oral):

The insurer of Jeep bearing registration No.PB-03C-0603 [hereinafter referred to as 'offending vehicle'], being aggrieved of the award dated 02.01.2015 passed by the Motor Accident Claims Tribunal, Hisar [for brevity 'the Tribunal'] is in appeal. The grievance raised is that the agent of the Insurance Company received premium from the insured, but the same was not deposited with the Company.

The brief facts necessary for adjudication of the present appeal are that a motor vehicular accident took place on 07.03.2013. The vehicles involved in the accident were motor cycle bearing registration No. HR-20J-5175 and the offending vehicle. As a result of the accident, Sushil Kumar sustained injuries. He was taken to General Hospital, Adampur, from where he was shifted to Sapra Hospital, Hisar.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and Insurance Company were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹3,11,000/- alongwith interest @ 7.5% per annum.

The insurer before the Tribunal had set up a case that the agent of the Insurance Company had not deposited the premium and documents with the insurer and hence, insurer is not liable to pay the compensation. The insurer relied upon the criminal complaint filed by it against its agent i.e. Minakshi Narula.

The Tribunal after considering the facts held that the insurer was not able to dispute the fact that the offending vehicle was duly insured on the date of the accident as per the policy issued was providing insurance cover to the offending vehicle on 07.03.2013 i.e. the date of accident. Merely for the reason that the agent of the Company had not deposited the premium with the insurer in itself shall not be enough to absolve the insurer from its liability to pay the compensation to the third party. Aggrieved of the said award, the present appeal has been filed.

Learned counsel for the appellant contends that till the premium is not deposited with the Company, there is no liability of the insurer to pay the compensation.

The contention raised by learned counsel for the appellant lacks merit. There is no challenge to the findings of the Tribunal that there was an insurance policy, which was valid at the time of accident. It is also not disputed that the agent was of the Insurance Company, she received the premium and relevant documents. The policy issued was not cancelled till the date of accident, it was cancelled on 15.05.2013 i.e. much later than the date of accident. The Principal-Agent relationship existed between the Insurance Company and agent. If there is a dispute between the Principal and Agent, for that dispute the insured cannot be made to suffer. In such circumstances, Insurance Company cannot be exonerated from its liability to pay the compensation.

No shadow can be cast upon the findings of the Tribunal.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

January 17th, 2019
pankaj baweja

1. Whether speaking/reasoned : Yes/ No
2. Whether reportable : Yes/ No