

In the High Court of Punjab and Haryana at Chandigarh

FAO-3963 of 2016(O&M)

Date of Decision:9.1.2019

Branch Manager, IFFCO Tokio General Insurance Company Limited

---Appellant

vs.

Khursheedan and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant

Mr. Jaswinder Singh Randhawa, Advocate
for respondent No. 8

Rekha Mittal, J.

CM No. 13487-CII of 2016

Prayer in this application is for condoning delay of 48 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 48 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 3963 of 2016

The present appeal directs challenge against order dated 7.1.2016 passed by the Commissioner under Employees' Compensation Act,

1923 (in short “the Act”) whereby compensation has been awarded on account of death of Alisher, driver of truck No. HR-38N/4985 under employment of respondent No. 8 and the insurance company has been held liable to pay compensation by way of indemnification of the insured.

Counsel for the appellant would inform that appeal has been preferred by the insurance company to press its right of recovery against the insured on account of insurance policy being cancelled due to dishonour of cheque No. 674704 dated 12.5.2012 drawn on IDBI Bank, Faridabad issued by the insured for payment of premium. It is argued that the aforesaid cheque was presented to the bank for encashment on 3.7.2012 and the same got dishonoured vide memo placed on record and intimation in this regard was received by the insurance company on 4.7.2012. Subsequent thereto, the insurance company cancelled the policy and sent intimation to the insured vide letter dated 8.8.2012. It is vehemently argued that as the insurance policy was issued subject to encashment of cheque and the cheque got dishonoured on its presentation to the bank, the insurance company is entitle to recover amount of compensation after discharging liability qua the claimants.

Counsel for contesting respondent No. 8, on the contrary, has supported the impugned order whereby plea of the insurance company in this regard has been rejected. It is argued that the cheque in question was issued on 12.5.2012 and the insurance company presented the cheque for encashment on 3.7.2012 after retaining the same for a period more than 1½ month. It is further argued that the respondent has produced on record statement of his bank account in the name of Bharat Cargo Movers and

perusal thereof would reveal that on most of the dates subsequent to 12.5.2012, there was sufficient balance in the account to honour the cheque in question. It is further argued that the respondent did not receive any intimation from the insurance company with regard to dishonour of the cheque immediately after 4.7.2012 nor he received an intimation with regard to cancellation of the insurance policy that purported to be cancelled after the accident had already taken place on 12.7.2012. According to counsel, had the respondent-insured received intimation immediately after dishonour of cheque, he would have ensured payment of amount of premium either by way of cash or demand draft etc. It is further argued that merely because there were insufficient funds in the account of the respondent on 4.7.2012 to honour the cheque presented on 3.7.2012, the respondent cannot be made to suffer by giving right of recovery in favour of the insurance company.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that the cheque in question was issued by the insured on 12.5.2012 and the insurance policy commenced with effect from 14.5.2012 valid upto 13.5.2013. Perusal of statement of account Ex. R-2 would reveal that since 14.5.2012 upto 3.7.2012 on most of the dates, there was outstanding balance in the account of Bharat Cargo Movers to honour the cheque worth Rs. 44,000/- approximately issued for payment of premium. There is no explanation by the insurance company as to why the cheque was not presented in the bank till 3.7.2012. The insurance company has failed to

adduce any evidence that immediately on dishonour of cheque, an intimation was sent to the insured in order to enable him to discharge his liability to pay the amount of premium. Even the insurance company has failed to adduce clear, cogent and convincing evidence that an intimation was sent to the insured with regard to cancellation of the policy. In the given scenario, the insurance company cannot be heard to say that it is entitled to press for right of recovery against the insured after satisfying the award passed in favour of the claimants. The matter would have been different had the insurance company presented the cheque for encashment immediately after its issuance and due intimation had been sent to the insured with regard to dishonour of the cheque in order to enable him to discharge his liability. In this view of the matter, I do not find an error much less infirmity in the order impugned directing the insurance company to pay compensation to the claimants by way of indemnification of the insured.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

9.1.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No