In the High Court of Punjab and Haryana at Chandigarh

FAO- 4860 of 2017(O&M)
Date of Decision: 28.1.2019

Mohammad Harish

---Appellant

versus

Imran and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Munfaid Khan, Advocate
for the appellant

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<u>Rekha Mittal, J.</u>

The present appeal directs challenge against award dated 7.3.2017 passed by the Motor Accidents Claims Tribunal, Mewat (in short “the Tribunal”) whereby compensation has been assessed on account of injuries sustained by the claimant in a motor vehicular accident that took place on 8.11.2015 and the claimant has been allowed compensation to the tune of Rs. 7,10,000/-. However, liability to pay compensation has been fastened against driver and owner of the offending vehicle whereas the insurance company has been exonerated of its liability on the basis of findings recorded in paras 22 and 23 of the award.

Counsel for the appellant would argue that even if cheque issued by the insured for payment of premium had been dishonoured, insurance company cannot escape liability to pay compensation to the third party though it may press for right of recovery against the insured after indemnifying the claimant. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India **New India Assurance Company Limited vs. Rula and others 2002(2) RCR (Civil) 391.** Further reference has been made to judgments of this court **National Insurance Company Limited vs. Hasina and others 2009 (48) RCR (Civil) 337** and of the Delhi High Court **Usha Aggarwal vs. Parmod Kumar Gupta and others 2013 (34) RCR (Civil) 243.**

The insurance company failed to cause appearance despite service, therefore, there is no contest to plea of the claimant.

Perusal of the award particularly paras 22 and 23 thereof makes it evident that the Court by relying upon judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Seema Malhotra 2001 (2) RCR (Civil) 456** has held that in view of latest pronouncement by Hon'ble the Apex Court, rule of law laid down in **Oriental Insurance Company Limited vs. Inderjit Kaur 1998(1) ACJ 123** is of no avail to respondent No. 1 therein (insured of the vehicle in question). The Court, in para 22 of the award, has noticed that dishonour of cheque Ex. R-4 has not been disputed on behalf of respondent No. 1. Rather it is contended that after dishonour of cheque, payment of premium was made in cash, however, no evidence has been led in this regard. The Tribunal drew an inference that premium qua policy Ex. R1 remained unpaid and as such the policy was void as in Ex. P1 it was specifically mentioned that policy shall be void from inception if premium cheque was not realized.

Hon'ble the Supreme Court in **Rula and others' case (supra)** by relying upon the three Judge Bench judgment in **Inderjit Kaur's case (supra)** has held that subsequent cancellation of insurance policy on the ground that the cheque through which premium was paid was dishonoured, would not affect rights of third party which had accrued on issuance of the policy on the date on which the accident took place. If, on the date of accident, there was policy of insurance company in respect of the vehicle in question, the third party would have a claim against the insurance company and the owner of the vehicle would have to be indemnified in respect of claim of that party. Subsequent cancellation of insurance policy on the ground of non-payment of premium would not affect rights already accrued in favour of the third party. In **Seema Malhotra's case (supra),** relied upon by the Tribunal, the earlier judgments of Hon'ble the Supreme Court **Inderjit Kaur's case (supra)** and **Rula and others' case (supra)** were considered. However, in that case, the insurer disputed its liability when the claim is made by the insured himself or his legal heirs without any third party being involved. Hon'ble the Apex Court has noticed in para 2 of the judgment that the insurance company has not disputed that the claims, if any, made by the kith and kin of the insured for the injuries sustained by them in the accident including the claims made by legal representatives of the deceased in such accident would also be treated as third party claims. The Tribunal without appreciating the issue involved in **Seema Malhotra's case (supra)** wherein the question was with regard to liability of the insurance company to pay compensation to the insured or his legal heirs without any third party being involved and the court having taken into consideration the provisions of Sections 25, 51, 52 and 65 of the Indian Contract Act and had held that when the insured fails to pay the premium promised or when the cheque issued by him dishonoured by company concerned, the insured can not claim performance from the insurer in such a situation, has applied this judgment in preference to **Inderjit Kaur's case (supra)**. However, the Bench that decided **Seema Malhotra's case (supra)** has not expressed any opinion about the judgments in **Inderjit Kaur's case (supra)** and **Rula and others' case (supra)** with regard to liability of the insurance company to indemnify third party even if the cheque given by the insured for payment of premium got dishonoured on its presentation to the bank. In this view of the matter, reliance upon judgment in **Seema Malhotra's case (supra),** in the given facts and circumstances of the instant case, is totally misplaced and is the result of non-application of mind. In this view of the matter, findings of the Tribunal exonerating the insurance company of liability to pay compensation to the claimant cannot be allowed to sustain. Resultantly, the insurance company shall be liable to indemnify the claimant but would have right of recovery against the insured after payment of compensation to the claimant.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

28.1.2019
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No