IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 15629 CII of 2018 in/and
FAO No. 4666 of 2018 (O&M)
Date of decision: 13.11.2019

Aurangjeb Khan and another

...Appellants

Versus

HDFC ERGO General Insurance Co. and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: None for the appellants.

JAISHREE THAKUR, J.

CM No. 15629 CII of 2018

This is an application that has been filed for condonation of 26 days' delay in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay in filing the appeal is condoned.

CM stands disposed of.

Main case

1. By way of the present appeal, the appellants herein seek to challenge the award dated 9.10.2017, by which the Motor Accident Claims Tribunal, Chandigarh, while awarding compensation of ₹17,75,034/- to respondents No. 2 and 3 herein, has fastened the liability to pay the same on the appellants, who are driver and owner of the offending vehicle.

2. In brief, the facts are that on 22.7.2016, deceased Raj Kumar

alias Raju was going from his house in Maloya towards Sector 39, Chandigarh, on his motorcycle. When he reached near Ziri Mandi, Maloya, Chandigarh, he was hit by a goods auto bearing registration No. CH-01-TA-1776, being driven by appellant No.1 in rash and negligent manner. Due to the impact, the deceased fell down on the road and received serious injuries. He was taken to PGI, Chandigarh, where Raj Kumar succumbed to the injuries on 29.7.2016. It was alleged that the accident took place due to the rash and negligent driving of appellant No.1. A claim petition was filed by the widow and mother of the deceased claiming that they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was working as a Salesman and was earning ₹12,000/- per month.

3. The claim petition was contested by the appellants, inter-alia, taking a plea that it was the deceased, who was driving his vehicle rashly and negligently and even beyond the middle on the road which led to the occurrence. It was averred that the driver of the offending vehicle tried to avert the occurrence even by blowing horn but due to fast speed of the vehicle of the deceased, the driver of the offending vehicle could not avert the occurrence. Issues were framed and thereafter oral as well as documentary evidence was led by the parties.

4. After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of appellant No.1 and on assessment of the facts and evidence before it allowed compensation as mentioned above, while fasting the liability to pay the same

on the appellant. The Insurance Company was absolved on the ground that there was no valid policy as no premium was received from the owner of the offending vehicle. The plea that the premium had been paid to the agent was disbelieved.

5. Today when the case was taken up for hearing none has appeared on behalf of the appellants. Under these circumstances, this Court has no option but proceed to decide the case. I have perused the grounds of appeal as well as the impugned award.

6. It has been averred in the grounds of appeal that the Tribunal has failed to take note of the fact that the claim petition was filed on 3.8.2016 and the reply/written statement to the said petition was filed by the Insurance Company on 8.11.2016. However, no complaint whatsoever was filed by the Insurance Company against its agent Jinkal G. Mehta or duly constituted Attorney although the copy of Insurance Policy available with the appellants was placed on record and was later on exhibited as Ex. PW3/1 showing Agent name as JINKAL G MEHTA with Agent Code 201078027708 and Tel. No. 91-8898983123 and contained digital signatures of duly constituted Attorney i.e. Ankur Bahorey.

7. The factum of the accident and involvement of the offending vehicle in the accident are not disputed. While fastening the liability on the appellants, the Tribunal relied on the statement of Akshya Bose, who, while proving documents Ex. R1 to Ex. R3, deposed that he is working as Assistant Manager with the Insurance Company. The Company never received premium from appellant No.2 or from any other person for getting

the vehicle No. CH-01-TA-1776 insured. He further deposed that there is a criteria for issuance of policy and the Insurance Company has made product code and product name for that purpose. The first four numbers of the policy are product code number by which it is ascertained as to which class of vehicle the policy has been issued. He further deposed that in the present case vehicle is a Piaggio and is a goods carrying vehicle. The Insurance Company also examined Shivbind Singh, Manager, who stated that he is working as Investigator and had given a complaint on behalf of the Insurance Company to the Superintendent of Police, Chandigarh on 25.1.2017 against appellant No.1, which is Ex. R4.

8. After analyzing the evidence produced by both the parties, the Tribunal held as under:-

> "*Otherwise, attention of the court has been drawn towards the cross-examination of respondents no. 1 and 2. It has been submitted that the policy in question was obtained while he (insured) was at the Auto stand of Burial. The previous conduct of the alleged insured has also been highlighted to show that earlier they were getting policies from the insurance offices of the different companies and not from the road side. Learned counsel for the insurance company has drawn the attention of this court towards Section 64 (MV) in the insurance Act 1938 which provides that there shall be no risk to be assumed unless premium is received in final. No receipt of premium paid has been placed on record. To this no plausible arguments have been advanced on behalf of the owner of the vehicle.*"

9. Even otherwise, in the instant appeal, there is no application filed under Order 41 Rule 27 of the Code of Civil Procedure seeking

permission to lead any additional evidence by way of placing on record a valid insurance policy. The findings of facts recorded by the Tribunal are based on record. There is no illegality or infirmity in the same. Consequently, the appeal filed by the appellants being devoid of merit stands dismissed.

13.11.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No