IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 997 of 2017
Date of decision: 23.10.2019

Ghanshyam Dass ....*Appellant*

Versus

United India Insurance Company Limited and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sidhant Bhonsle, Advocate
for the appellant

Mr. Neeraj Khanna, Advocate
for respondent insurance company

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Rekha Mittal, J. (Oral)

CM 3206 CII of 2017

Prayer in this application is for condoning delay of 9 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 9 days in filing the appeal stands condoned.

Main case

Challenge in the present appeal has been directed against award dated 18.10.2016 passed by the Motor Accidents Claims Tribunal, Hisar (in short, 'the Tribunal') whereby the insurance company has been given right of recovery against the appellant (registered owner of offending vehicle) and driver of the said vehicle on the premise that driver was not duly licensed to drive the vehicle in question.

Counsel for the appellant would argue that the insurance company did not examine a witness of the concerned Licensing Authority to discharge onus to prove that licence possessed by Dharambir, driver of offending vehicle was not issued by the concerned Licensing Authority. It is further argued that Ghanshyam Dass, owner of vehicle appeared in the witness box to prove that he had seen driving licence possessed by Dharambir at the time when Dharambir was employed. No evidence was adduced by the insurance company to prove that Ghanshyam Dass ever had knowledge or received intimation from the insurance company that licence possessed by Dharambir, driver of vehicle is not valid, therefore, there was no need for the appellant to seek verification of licence from the concerned Licensing Authority. It is further argued that in view of testimony of Ghanshyam Dass, plea of the insurance company that the insured is guilty of breaching terms and conditions of policy cannot be allowed to sustain and consequently, right of recovery given in favour of the insurance company may be set aside. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court ***Pepsu Road Transport Corporation vs. National Insurance Co. Limited, 2013 (4) R.C.R. (Civil) 273.***

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal with regard to driving licence on the basis whereof, the insurance company has been given right of recovery. It is argued that though Ghanshyam Dass appeared in the witness box but he had not stated that he found licence possessed by Dharambir, driver of offending vehicle to be genuine, therefore, his testimony would not enure to his benefit to escape his liability for non-verification of licence from the concerned Licensing Authority. In addition, it is argued that Dharambir, driver of offending vehicle appeared in the witness box and deposed that he never resided in Nagaland nor undertook any driving test and licence was given to him by some person.

The Tribunal did not frame a specific issue on the question of validity or otherwise of driving licence possessed by Dharambir. The insurance company did not examine a witness of the concerned Licensing Authority along with relevant records to prove that driving licence possessed by Dharambir was not issued or renewed by the authority purported to have issued/renewed the said licence. In the given circumstances, the insurance company cannot derive any advantage to its contention from document Ex.R5, purported to be a verification report received under the Right to Information Act. The insurance company also did not examine the witness who sought the said information or received the same. In this view of the matter, the insurance company has failed to discharge its initial onus to establish that Dharambir, driver of offending vehicle was not duly licensed to drive the offending vehicle and as such, the insured is guilty of violating the terms and conditions of policy, constituting a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988.

Ghanshyam Dass, registered owner of the vehicle tendered into evidence his duly sworn affidavit Ex.RW2/A by way of examination in chief. A relevant extract from para 5 of his affidavit reads as follows:-

> "*I employed the driver Dharambir in the month of December, 2013 after seeing his original license. The original license is having seal and stamp of concerned RTO which was issued to Dharambir in year 2009 and was renewed up to 27.09.2015. It is bearing the signatures of RTO over the stamp of Regional Transport Officer, Mokokchung, Nagaland.*"

In cross examination, he had stated that licence was not verified by him from the concerned Licensing Authority. No such fact has been elicited in cross examination of Ghanshyam Dass that he was ever informed by the insurance company that driver engaged by him did not possess a valid driving licence or he gained knowledge otherwise that licence produced by Dharambir at the time of his employment was not issued by the concerned Licensing Authority. There is no such obligation in law imposed upon the insured to seek verification of licence from the concerned Licensing Authority unless he gets to know that licence is not genuine. In the given circumstances, it is difficult to accept contention of the insurance company that testimony of Ghanshyam Dass is not sufficient to rebut plea of the insurance company with regard to his having breached terms and conditions of the insurance policy. That being so, the appellant can certainly derive benefit of what has been held by Hon'ble the Supreme Court in ***Pepsu Road Transport Corporation (supra).*** In the given scenario, right of recovery given to the insurer against the insured cannot be allowed to sustain. Right of recovery given against the driver is otherwise against law for want of privity of contract between the insurer and driver of offending vehicle. In this view of the matter, findings of the Tribunal giving right of recovery in favour of the insurance company are not legally sustainable and are accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

23.10.2019
Mohan Bimbra

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