In the High Court of Punjab and Haryana at Chandigarh

FAO-7818 of 2016(O&M)
Date of Decision: 12.4.2019

IFFCO TOKIO General Insurance Company Limited

---Appellant

versus

Krishan and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ankur Gupta, Advocate
for the appellant

Mr. D.C.Dhaula, Advocate
for respondent No. 1

Mr. S.P.Chahar, Advocate,
for respondent No. 2

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Rekha Mittal, J.

CM No. 26332-CII of 2016

Prayer in this application is for condoning delay of 113 days in filing the appeal.

Counsel for the applicant-appellant would argue that claim of the injured-victim namely Krishan already stands satisfied and dispute raised in the present appeal is in the context of violation of terms and conditions of insurance policy. It is further argued that delay in filing the appeal is neither intentional nor mala fide. According to counsel, a liberal approach is required to be adopted for condoning delay so that meritorious claims are not rejected on technical considerations. The last submission made by counsel is that no third party interests have been created during the intervening period, therefore, delay in filing the appeal should not be allowed to enure to benefit of insured/owner of the vehicle.

Respondent No. 2 has not filed any reply to the application for condonation of delay and as such there is no contest to averments raised in the application.

Counsel for respondent No. 1 has conceded to the fact that compensation has already been paid to the injured-claimant by the insurance company.

Keeping in view the above, the application is allowed and delay of 113 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO- 7818 of 2016

The sole submission made by counsel for the appellant is that as the offending vehicle was used for hire or reward, in violation of terms and conditions of insurance policy, findings recorded by the Motor Accidents Claims Tribunal, Rohtak (in short “the Tribunal”) on issue No. 4 (wrongly mentioned as issue No. 3) can not be allowed to sustain and liable to be set aside. It is argued that in the FIR, it has been specifically recorded that offending vehicle namely Jeep No. HR-39B-1147 was being used for carrying passengers and Krishan-injured victim in his cross examination has admitted that he travelled in the jeep in question, on payment basis.

Counsel representing respondent No.2, on the contrary would argue that the insurance company has failed to lead sufficient much less cogent evidence to establish that the vehicle in question was used for hire or reward or the owner had knowledge of the same.

Be that as it may, perusal of findings of the Tribunal qua issue No. 4, wrongly titled as issue No. 3 for the second time, would reveal that the Tribunal has not adverted to this question while deciding issue No. 4 that reads as follows:-

> "*Whether there was violation of the terms and conditions of the insurance policy by respondent No. 1, if so to what effect? OPR3*"

Since this disputed question of fact has not been decided by the Tribunal, the matter is remitted to the Tribunal for deciding issue No. 4 to the limited extent, if the vehicle in question was used for hire or reward and the same amounts to violation of terms and conditions of the insurance policy, if so, its effect.

In view of what has been discussed hereinbefore, the appeal stands disposed of. The matter is remitted to the Tribunal for deciding issue No. 4 to the aforesaid limited extent after providing an opportunity to the insurance company and owner of the offending vehicle for leading evidence, if any. The parties through their counsel are directed to appear before the Tribunal on 7.5.2019.

Since the dispute that is left to be decided is between the insurance company and the insured, the Tribunal would not issue any notice to the claimant nor the claimant needs to cause appearance before the Tribunal.

(Rekha Mittal)
Judge

12.4.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No