IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4505-2012 (O&M)
Date of Decision: 28.07.2022

HDFC Ergo General Insurance Co. Ltd. ..... Appellant

versus

Jai Bhagwan and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant.

None for respondent No.1.

Mr. Rajesh Lamba, Advocate
for respondent No.2.

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PANKAJ JAIN, J.

Insurer is in appeal. Claim petition was filed by the claimant seeking compensation for the injuries suffered in a motor vehicular accident dated 21.07.2009.

2. So far as the factum of accident is concerned, the facts as well as the finding recorded on issues No.1 and 2 are not in dispute. The appellant i.e. insurer however, disputes liability. Issue No.3 framed by learned Tribunal reads as under:-

> "Whether the respondent No.3 is not liable to pay the compensation in view of preliminary objections taken by it in its written statement? OPR."

3. Mr. Malhotra, Advocate appearing for the insurer asserts that the finding recorded by the Tribunal is perverse. Reliance has been placed on Ex.P-35-Insurance cover note dated 19.07.2009 to hold that on the date of accident i.e. 21.07.2009, the vehicle was insured and therefore the appellant is liable to

indemnify the insured. He draws attention of this Court to the insurance cover note Ex.R-6 which is dated 24.07.2009 and claims that in case insurance cover note Ex.R-6 is taken into consideration that would show that on the date of accident i.e. 21.07.2009, the vehicle was not insured. It is claimed that Ex.P-35 is merely a photocopy and that too showing that the premium has been paid in cash whereas as per Ex.R-6 premium was actually paid by cheque.

4. Per contra, Mr. Rajesh Lamba, Advocate submits that the Tribunal rightly believed Ex.P-35. The insurer could not prove that the cheque as mentioned in Ex.R-6 was encashed even though specific opportunity was granted to produce the credit note. However, he is not in a position to deny the fact that Ex.P-35 document on record was merely a photocopy which was never proved in accordance with law.

5. I have heard counsel for the parties and have gone through the record of the case with their able assistance.

6. Admittedly, the document relied upon by the Tribunal Ex.P-35 is a photocopy. No foundation has been laid for existence thereof nor any permission has been sought before the Tribunal to prove the same by way of secondary evidence. Thus, reliance by the Tribunal on the cover note Ex.P-35 is misplaced and finding on issue No.3 cannot be sustained. Ex.R-6 on the other hand is counterfoil/counterpart i.e. carbon copy which falls within the ambit of Section 62 of the Indian Evidence Act, 1872 and is a primary evidence. Merely by saying that credit note w.r.t. encashment of the cheque was not produced, the same cannot be belied. The only person who could have disputed it and was in the possession of the best piece of evidence to dispute the same was respondent No.3-owner of the vehicle. However, he has opted not to participate in the proceedings and was proceeded against ex-parte before this Hon'ble Court vide order dated 23.07.2015.

Consequently, the finding on issue No.3 is set aside. The appellant is granted recovery right to recover the awarded amount from respondent No.3.

7. Appeal stands allowed.

8. Since the main appeal has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

28.07.2022
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : No