2023:PHHC:155668

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-27346-2023
Date of decision: 06.12.2023

NEW INDIA ASSURANCE COMPANY LTD ....Petitioner

VERSUS

SUKHCHAIN AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present:- Mr. Ashwani Talwar, Advocate
for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 30.08.2023 passed by respondent No.3-the National Consumer Disputes Redressal Commission, New Delhi whereby the order passed by the State Consumer Disputes Redressal Commission, Punjab has been set aside and the complaint filed by the private respondents No.1 and 2 has been allowed directing the petitioner-Insurance company to pay an amount of Rs.5,51,468/- alongwith interest thereupon on account of accidental damage of the truck bearing number RJ-07-GA-9604.

Learned counsel appearing on behalf of the petitioner contends that the comprehensive Insurance policy was taken in the name of Pawandeep Singh for the period from 15.03.2014 to 14.03.2015 wherein, the truck bearing registration RJ-07-GA-9604 was insured against declared value of Rs. 19 lakhs. During the said period of Insurance, the truck met with an accident on 04.07.2014 and requisite claim was lodged with the Insurance company. The Surveyor deputed by the petitioner-Insurance company assessed the damage to the tune of Rs. 5,51,468/-, however, it transpired that the previous owner of the truck had expired on 24.03.2013 as per the death certificate submitted to the Insurance Company by the respondent No.1-son of Pawandeep Singh-Previous owner. The claim was thus repudiated on the ground that the agreement in question could not have been executed by a dead person and that the contract is *void-ab-initio.*

The learned National Consumer Disputes Redressal Commission, New Delhi dealt with the entire issue & recorded as under:-

> *"14. The key issue to be decided is whether an Insurance Policy wherein the insured was a dead person at the time of renewal is void in all circumstances or in most circumstances or given the facts of this case such breach of contract be a fundamental breach or can be ignored. In this case, the Policy was taken when the insured was alive and during the currency of the Policy, the insured died. A renewal was made in his name when he was no longer alive. It is also a fact that the registration of the vehicle, for which the Policy was taken, was changed in favour of the Complainant No.1 being the father of the deceased Policy Holder. The question to be decided is whether the renewal constitutes a fundamental breach of the Policy and, therefore, the claim to be rejected. Going by the Order of the High Court of Madhya Pradesh at Jabalpur in National Insurance Co. Ltd. (Supra), it is the fundamental duty of the Insurance*

Company to obtain a fresh Proposal Form, which would have undoubtedly carried the signature of the Complainant No.1 and certainly not the signature of the deceased. Renewing a Policy in a routine manner is, in my considered view, a deficiency of service on the part of the Insurance Company. Some inquiry should have been made even if à fresh Proposal Form was not taken. Therefore, the repudiation made by the Insurance Company dated 25.05.2015 is legally not sustainable.

15. Further, from the record and the arguments made, it is very clear that there was no wilful misrepresentation of facts by the Petitioners/ Complainants, which would vitiate the contract of insurance as no opportunity was given to them to come out with the correct position. Only wilful suppression of material fact would vitiate the insurance contract. This contract would be voidable ab initio only when an opportunity would have been given to the insured to state the facts. In the absence of such opportunity been given, declining a contract of Insurance Policy as void is definitely not in order."

16. The Surveyor appointed by the Insurance Company in its Report dated 02.02.2015 has accessed the net loss suffered by the Complainants at Rs.5,51,468/-. Since no argument has been made by the Insurance Company regarding the assessment made by the Surveyor, therefore, in my considered view this is the amount that shall be payable by the Insurance Company to the Petitioners/ Complainants along with a reasonable rate of interest for the delay in payment of the claimed amount."

Learned counsel appearing on behalf of the petitioner does not dispute that the insurance policy was against the truck and that merely because the original holder of Insurance policy had passed away it would have no bearing insofar as the subject matter of insurance is concerned or the decision to insure the truck. Further, there is also no difference in the premium that may be paid.

It was after taking into consideration all the said circumstances and noticing that the same cannot be said to be a wilful suppression of a material fact as such an information would not be material for the taking of a decision to underwrite a risk or not, the National Consumer Disputes Redressal Commission allowed the Revision Petition and directed the Insurance Company to pay the amount as assessed by the Surveyor alongwith simple interest @ 6% p.a. from one month after the date of submission of Surveyors report dated 02.12.2015 and within a period of 08 weeks failing which the amount of interest payable was to increase @ 9% per annum.

On being questioned about the the illegality or perversity in the order, counsel for the petitioner fairly seeks withdrawal of the present writ petition.

Disposed of as withdrawn.

(VINOD S. BHARDWAJ)

JUDGE

DECEMBER 06, 2023

Vishal sharma

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