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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-383-1993 (O&M)
Reserved on : 02.05.2024
Date of Decision : 06.05.2024

M/s Manjit Singh Satnam Singh ....Appellant

VERSUS

M/s National Insurance Co. Ltd and Ors. ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Surinder Gandhi, Advocate for the appellant.

Mr. Abhishek Goyal, Advocate for
Mr. Pardeep Goyal, Advocate
for the respondents-Insurance Company.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 12.09.1992 passed by the First Appellate Court reversing the judgment and decree dated 22.07.1988 passed by the Trial Court.

2. Brief facts relevant to the present case are that the plaintiff-appellant herein is the owner of a Truck bearing Registration No.HRH/8721 and had been using it as a public carrier. The truck was comprehensively insured with the defendant-respondents for a sum of Rs.70,000/- on 19.10.1976 for one year starting from 19.10.1976 to 18.10.1977. A risk cover note bearing No.124579 was issued by the Agent of the Insurance

Company, namely, Sh. D.S. Saini, in favour of the plaintiff-appellant. It was further the case set up that a consignment of 200 bags of CAN-27 weighing about 100 quintals belonging to FCI was loaded on the truck on 19.10.1976. The said consignment was to be delivered at Ateli. The truck started from its destination at about 09.00 pm on 19.10.1976 and on 20.10.1976 at about 05.00 am, when the truck was just about 3 kms away from Ateli, it caught fire accidentally as a result of which the truck alongwith the consignment was totally burnt. The matter was reported to the Police and the office of the defendant-respondents was also informed. A surveyor was appointed to assess the loss. As per the report, a loss of Rs.47,250/- was suffered on account of the accidental fire. However, the said amount was not paid. It was further the case set up that earlier the truck was insured with Oriental Fire & General Insurance Company Limited vide policy No.2425/1/65/MV/2006 for 12 months from 22.06.1976 to 21.07.1977 against third party. It was further the case set up that while getting the vehicle comprehensively insured with the defendant-respondents, the policy with the Oriental Fire & General Insurance Company Limited was got cancelled. Since the defendant-respondents did not pay the amount of loss, the plaintiff-appellant filed a suit for recovery. Written statement was filed by the defendant-respondents taking the objection that the cover note was issued on 20.01.1976 in collusion with the Agent, namely, Sh. D.S. Saini, after the truck had met with an accident and that the said note was fabricated. It was further the stand taken that the proposal form had not been filled up correctly and material information had been concealed. It was further averred that it had been concealed from the defendant-respondents that earlier the truck was insured with the Oriental Fire & General Insurance Company Limited and the plaintiff-appellant had made a representation that the truck was not previously insured. Replication was filed denying the contents of the written statement and reiterating those made in the plaint.

3. On the basis of the pleadings of the parties the following issues were framed :

> 1. Whether the plaintiff firm is a registered firm with M/s Manjit Singh Satnam Singh as its registered partners? If not its effect ? OPP
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> 2. Whether the plaintiff firm was the owner of truck No.HRH /8721 ? OPP
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> 3. Whether the truck in question was comprehensively insured for Rs.70,000/- from 19.10.76 to 19.10.76 with the defendant Insurance Co. ? OPP
>
> 4. Whether the plaintiff firm is entitled to Rs.47,250/- as damages ? OPP
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> 5. Whether the plaintiff firm is entitled to any interest? If so at what amount rate and for what and for what period ? OPP
>
> 6. Whether the Civil Court at Hisar has got the jurisdiction to try the present suit ? OPP
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> 7. Whether the suit is barred by time ? OPD

8. Whether the proposed form mark A has not been correctly filled up by the plaintiff ? If so its effect ? OPD

9. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 22.07.1988. Aggrieved by the same, an appeal was preferred by the defendant-respondents which was allowed by the First Appellate Court vide judgment and decree dated 12.09.1992. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the First Appellate Court held that connivance was not proved and also rejected the surveyor's report which was relied upon by the learned counsel for the defendant-respondents. However, on the ground of concealment in column No.16 of the proposal form, the appeal was allowed and it was held that the defendant-respondents had legally repudiated the claim of the plaintiff-appellant under Section 96 of the Motor Vehicles Act, 1939 because the plaintiff-appellant did not disclose the material facts while filling up the proposal form. It is further the contention of the learned counsel that the insurance policy with the Oriental Fire & General Insurance Company Limited was a third party policy and the same was got cancelled before taking the insurance policy with the present defendant-respondents. The learned counsel would further contend that Sh. D.S. Saini, the agent of the Insurance Company, had stepped into the witness box as PW6 who clearly stated that the insurance was done on 19.10.1976. It is further the

contention of the learned counsel that the truck was also challaned on 19.10.1976 (Ex.P16) and the risk cover note was taken by the Police.

6. *Per contra,* the learned counsel for the defendant-respondents would contend that there was a material concealment by the plaintiff-appellant inasmuch as in column No.16 of the proposal form it was not disclosed that earlier the truck was insured for third party insurance and hence the claim has rightly been repudiated.

7. I have heard the learned counsel for the parties.

8. As per the law laid down by a Constitution Bench of the Hon'ble Supreme Court in the case of **Pankajakshi (dead) through LR's & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law.

9. At the outset a query was put to the counsel for the defendant-respondents as to whether there was any bar to a person holding two insurance policies. The reply given by the learned counsel is in the negative. The learned counsel for the defendant-respondents has not been able to show to this Court any clause in the policy which states that in case an earlier policy is held by the insured, the second policy cannot be issued or would be barred by any provisions of law. Further still, the earlier policy itself was a third-party insurance policy with the Oriental Fire & General Insurance Company Limited which stood cancelled prior to taking the present policy. Though it has vehemently been argued by the learned counsel for the defendant-respondents that non-disclosure of the earlier policy amounted to a material concealment, however, he has not been able to show as to how it

materially affected the granting of the second policy. There is nothing on the record which proves that the plaintiff-appellant was debarred from taking the insurance with the defendant-respondents after getting the earlier insurance policy cancelled. It is not the case of the defendant-respondents that the plaintiff-appellant was trying to recover his loss from both the insurance companies. It is not a case of double insurance. The contention that the insurer is not liable to pay the damages and the policy is void due to concealment of material facts has no merit. Even otherwise, there was no suppression of material facts by the plaintiff-appellant. The other findings returned by the First Appellate Court have not been challenged by the defendant-respondents. No other point was argued.

9. In view of the discussion above the present appeal deserves to be allowed. Accordingly, the present appeal is allowed. The judgment and decree of the First Appellate Court dated 12.09.1992 is set aside and that of the Trial Court dated 22.07.1988 is restored. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

06.05.2024
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO