134. 2024:PHHC:050498

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. **FAO No.1515 of 2023 (O&M)**
Date of decision: 08.04.2024

National Insurance Company Limited .... Appellant

Versus

Vero and others .... Respondents

2. **FAO No.1520 of 2023 (O&M)**

National Insurance Company Limited .... Appellant

Versus

Rajesh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Vishwajit Bedi, Advocate, for the appellant.

Mr. Munish Gupta, Advocate, for respondents No.1 and 2 in FAO No.1515 of 2023 and for respondents No.1 to 4 in FAO No.1520 of 2023.

GURBIR SINGH, J.

1. By this order, two appeals i.e. FAO Nos.1515 and 1520 of 2023 filed by Insurance Company are being disposed of, as they arise from the same accident.

2. Brief facts of the case are that on 19.10.2021, Rajni along with Kashmiro Devi and Rohan were going to Adda Chabbewal from their village on a motorcycle bearing registration No.PB-09-M-2372 being

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driven by Rohan and on reaching near turning of Village Mehna on Hoshiarpur-Mahilpur road, they parked their motorcycle on katcha portion of the road and were purchasing groundnuts. At about 11:30/11:45 AM, the offending truck bearing registration No.PB-04-K-9659, being driven by respondent-Amritpal Singh @ Preet, in a rash, negligent manner and at a high speed, was coming from Hoshiarpur side and hit against the persons present on the katcha portion. Due to said accident, Rajni and Kashmiro Devi died. This accident was witnessed by Rohan, Gurpreet, Steven, Jagdeep and Harjinder and other persons. On the statement of Rohan, FIR was also lodged on the same day i.e. 19.10.2021 under Sections 279, 337, 304-A of IPC at Police Station Chabbewal against the driver.

2.1 On account of death of Rajni, the claimants, who are her parents, filed a claim petition i.e. MACP No.175 of 2021 against which FAO No.1515 of 2023 has been filed, whereas on account of death of Kashmiro Devi, the claimants, who are husband, two minor children and mother-in-law filed claim petition i.e. MACP No.176 of 2021, against which, FAO No.1520 of 2023 has been filed.

2.2 Vide awards dated 10.01.2023, the claimants were granted compensation of Rs.15,31,280/- on account of death of Rajni, whereas on account of death of Kashmiro Devi, claimants were granted compensation of Rs.21,63,480/-. The appellant-Insurance Company was given the right to recover said amount of compensation from the driver and owner of offending truck on the principle of ‘pay and recover’.

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3. Learned counsel for the appellant-Insurance Company has argued that the insurance policy Ex.R7 of the offending truck was obtained by way of fraud by Sukhwinder Singh, owner of offending truck. The appellant examined Vijay Anand, Senior Assistant in the appellant Insurance Company as RW1, who made the statement that Sukhwinder Singh approached the branch of the Company on 28.07.2021 for renewal of the insurance policy in respect of motorcycle. He had earlier the policy with Bajaj Allianz General Insurance Company up to 29.07.2021 in respect of Hero Honda Splendor Motorcycle, Model 2005, bearing registration No.PB-04-K-9659. He provided the photocopy of previous policy and on the basis of particulars mentioned in the proposal form and previous year policy issued by Bajaj Allianz General Insurance Company, fresh renewal policy was issued in his favour for the period from 29.07.2021 to 28.07.2022. A complaint was also made against Sukhwinder Singh, for playing fraud. RW2-Raman Saini, Branch Operations Service Manager, Bajaj Allianz General Insurance Company, was also examined, but the Tribunal failed to take into consideration his statement.

4. Learned counsel for the claimants have submitted that if policy was obtained by misrepresentation, then Insurance Company can only have recovery rights after paying the award amount to the claimants. Reliance is placed on case ***National Insurance Company Limited Versus Vijay and others, Special Leave Petition (c) Nos.677-681 of 2019, decided on 15.09.2022.*** He has also placed on record copy of the order dated

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06.09.2023 passed by learned Executing Court that amount of award has already been deposited by the Insurance Company, same was paid to the claimants, so Insurance Company is entitled to recover the amount from the driver and the owner.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. In the case in hand, learned Tribunal after awarding the amount of compensation further held that on payment of amount of compensation by the appellant-Insurance Company to the claimants, it would be entitled to recover the said amount from the owner and driver on the principle of 'pay and recover'. Admittedly, the amount of compensation has already been deposited by the Insurance Company and the same had been disbursed to the claimants. Raman Saini, Branch Operations Service Manager, Bajaj Allianz General Insurance Company, was examined as RW2, who brought the summoned record. He stated that he had seen the insurance policy of motorcycle bearing No.PB04-K-9659, mark RX. He deposed that it was fake and in their record, said policy did not exist. This insurance policy was issued by the appellant-Insurance Company on the basis of fake insurance policy Mark RX issued by Bajaj Allianz General Insurance Company. In other words, the appellant-Insurance Company neither took any step to verify if previous insurance policy was valid or fake, nor physical verification of the vehicle was conducted and even no Registration Certificate of the offending truck was taken into consideration.

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The insurance policy was a result of misrepresentation and instead of getting the truck insured, motorcycle was got insured.

6.1 In case ***National Insurance Company Limited Versus Vijay and others (supra),*** the vehicle was got registered as commercial vehicle but owner of the vehicle obtained insurance policy of a private car use. There was a misrepresentation on the part of the insured. The Hon'ble Apex Court held that the liability of the Insurance Company under the insurance would not arise. The moment it is found that insurance policy was obtained by misrepresentation, in that case, there shall be no liability of the Insurance Company at all and the entire amount of compensation paid to the claimants shall be recoverable by the Insurance Company from the owner.

7. In the case in hand, the insurance policy was obtained by misrepresentation, the Insurance Company has already paid the amount of compensation, learned Tribunal has already given the recovery rights to the Insurance Company on the principle of 'pay and recover', so there is no merit in the present appeals and the same are dismissed accordingly.

8. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

April 08, 2024
sanjeev

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

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