2024:PHHC:057534

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8296-2015 (O&M)
Date of Decision: April 26, 2024

HDFC ERGO General Insurance Company Ltd.
...Appellant

VERSUS

Parshini Kaur and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Pradeep Kumar, Advocate
for the appellant.

Mr.Arvind Rajotia, Advocate
for respondents No.1 to 4.

Mr.Amit Jain, Advocate
for respondent No.6.

****

ARCHANA PURI, J.

The present appeal has been filed by the appellants-insurance company, thereby assailing the liability fastened upon it, together with the owner and driver of the offending car bearing registration No.PB-10AT-3312, vis-a-vis, the compensation assessed, on account of death of Jarnail Singh, in a motor vehicular accident.

The accident in question had taken place on 23.04.2014, as a result whereof, Jarnail Singh received injuries, which proved fatal. Learned Tribunal had concluded about the accident to have taken place, on account of rash and negligent driving of the offending car by respondent-Kamaldeep Singh and ultimately, on appraisal of the evidence, brought on record, learned Tribunal had granted compensation to the extent of Rs.25,86,216/-, to the respondents-claimants and the liability was fastened, jointly and severally upon the driver, owner and insurer of the offending car.

Feeling aggrieved, only the insurance company had filed the present appeal, thereby assailing the liability, so fastened upon it, to pay the compensation.

At the very outset, learned counsel for the insurance company has submitted that though, the fact and manner of taking place of the accident, as concluded by learned Tribunal, is not assailed, it is in fact, only the liability, which is questioned by the insurance company. In fact, it is submitted that it is the categoric claim of the insurance company that the car bearing registration No.PB-10AT-3312 was never insured with the insurance company, whereas, respondents-driver and owner had taken the plea of the offending car to be insured with the insurance company w.e.f 22.02.2014 to 21.02.2015.

The insurance policy has come on record as Ex.R4 and R9. However, the insurance company asserts about the said policy to have never been issued by it. In this regard, RW-1 Shivbind Singh, Manager, Risk and Loss Litigation Unit, has been examined, whose affidavit is Ex.RW1/A. This witness, in his affidavit, stated about policy No.2319 2005 4506 9500 000 produced by respondents-driver, is a fake document. He also stated therein that no policy had been issued by the insurance company for the vehicle bearing registration No.PB-10AT-3312, in the name of Pritpal Singh s/o Sh.Joginder Singh, for the period 25.02.2014 to 24.02.2015 and even, no proposal was received to get the insurance policy from the insurance company. In fact, it is also stated by him in the affidavit that it was a fake policy and no premium was received by the insurance company. Further, it is stated that the insurance company got verified the record of policy No. 2319 2005 4506 9500 000 and stated about alleged policy to be forged and fictitious document. Furthermore, this witness had also stated that the insurance company had sent an application dated 22.06.2015 to SHO, P.S. Sadar Khanna, through registered post No.ED467398660IN, for initiation of action against accused persons.

In this regard, before coming to the cross-examination of the said witness, also it is pertinent to mention that Pritpal Singh had stepped into witness box as RW-2. He had categorically deposed about himself to be registered owner of the car bearing registration No.PB-10AT-3312 and that the same was insured with the insurance company w.e.f. 22.02.2014 to 21.02.2015. He also further stated that the said policy was issued by the company, after charging premium through its authorised agent M/s Aarvi General Insurance Services with agent code 200936320702 to Sh.Jagdeep Singh and the said policy has been denied, at the last end, in order to avoid the liability.

Such being the evidence of the rival parties, coming on record, it is pertinent to mention that the no satisfactory evidence, at the instance of the insurance company, has come on record, to prove about the alleged insurance policy to be forged and fabricated. It is categoric claim of Pritpal Singh, about the premium paid through authorised agent M/s Aarvi General Insurance Service with agent code 200936320702, which is so evident from the insurance policy. In fact, RW-1 Shivbind Singh, who was examined by the insurance company, while facing cross-examination deposed that the policy was issued by the Operation Department of Head Office and he further deposed that he had never worked with the Operation Department. He also deposed that all the policies are issued under the digital signature by Mr.Ankur Bahorey, whose name and signature are also evident from the insurance policy Ex.R9.

Furthermore, this witness also stated that he never met Mr.Ankur Bahorey and respondent No.2 i.e. Pritpal Singh. Also therein, he submits that the licence of M/s Aarvi General Insurance Company was cancelled on 21.05.2014. Such being the admission, coming in the cross-examination, it is evident that the said witness, in fact, had himself not conducted any such probe into the matter of insurance policy to be fake one. In fact, as evident, the insurance policy was issued under the signatures of Mr.Ankur Bahorey, but however, said most important person, who could have stated about the policy to have not been issued under his signatures, has not been examined. In fact, RW-1 Shivbind Singh had also not met Mr.Ankur Bahorey, at any time. Besides the same, agent of M/s Aarvi General Insurance namely Sh.Jagdeep Singh, through whom, the premium was paid, has also not been examined by the insurance company.

In fact, agent Jagdeep Singh of M/s Aarvi General Insurance, was the best person, who could have been summoned as a witness by the insurance company and things would have been straightened by him, with regard to the transaction, having taken place between the owner of the vehicle and him, for the purchase of the insurance policy or not, or about the manner, in which the said policy, even if it was fake, having been so obtained. There is, in fact, no evidence to the effect that owner of the offending car had obtained the fake policy, in collusion with staff or agent of the insurance company. Even, from the evidence on record, no apparent role appears to have been played by the owner, in obtaining the fake insurance policy. It is difficult to pin-point, who is responsible for the issuance of alleged fake insurance policy. The onus to prove so, was upon the insurance company, but however, no such evidence, has been led. The agent has not been examined. The official of the insurance company, under whose signatures, the policy was issued, has also not been examined. In fact, he was not joined in any probe.

Even though, RW-1 Shivbind Singh had stated about having conducted the probe, but in what manner this probe was conducted, the same does not stand established. No record of the insurance company has been produced to establish about the alleged policy bearing No. 2319 2005 4506 9500 000, to have never been issued or was not connected to the vehicle in question. Moreover, RW-1 Shivbind Singh, in cross-examination, had stated that the policy was issued by the Operation Department of their Head Office and further, he stated that he never worked in Operation Department. If it be so, he was not the relevant person, who had conducted the probe and assertion of conducting the probe, is also quite vague. No person from the Operation Department has been examined. Even, Mr.Ankur Bahorey, under whose signatures, the questioned policy is issued, has also not been examined.

In the given circumstances, the satisfactory evidence to question the genuineness of the insurance policy, has not been led. Though, RW-1 Shivbind Singh had stated about an application having been filed before SHO, for initiation of action and the same has come on record as Ex.R6 and

R7, but however, beyond the same, no evidence, as such, has been led. What was the outcome of that application, nothing is proved by the insurance company. Also, nothing is coming forth, about registration of the FIR or any other action taken, on the basis thereof.

Besides the same, there is nothing coming on record, about the action taken by the insurance company against the agent, on account of questioned policy. In the given circumstances, the insurance company, as such, has failed to discharge its onus. In the light of the aforesaid conclusion, the policy in question, apparently does not appear to be a fake policy or also no apparent role is established, on the part of the owner, in obtaining the insurance policy, in malafide manner. For all intents and purposes, this questioned policy, ought to be taken into consideration. Moreover, the third party is not concerned and does not come into picture at all, in view of the internal dispute between the insurer and the insured. The claim can be maintained by third party i.e. the claimants against the insurer.

In the given circumstances, at the maximum, the insurance company, could initiate any action against the agent, vis-a-vis the policy, if at any stage, it is established to be fake. However, the Award, casting liability on the insurer and providing to the insurer a right of indemnity, was justified, under the circumstances. Precisely, on this account, the conclusion arrived by learned Tribunal is perfectly reasoned and brooks no interference.

Consequently, the appeals sans merit and is hereby dismissed.

April 26, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**