2024:PHHC:026148

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118 **FAO-7721-2017 (O&M)**
Date of Decision : 26.02.2024

SARTHAK ASHRI & ANR. .... Appellants

VERSUS

RAM KUMAR @ RAM SINGH & ANR. .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vipul Sharma, Advocate for the appellants.

Mr. Kuldeep Sheoran, Advocate for respondent No.1.

Mr. Shireesh Gupta, Advocate and
Mr. Diwan S. Adlakha, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the driver and the owner of the offending vehicle against the award dated 20.09.2017 passed by the Motor Accident Claims Tribunal, Hisar vide which the Insurance Company (respondent No.2 herein) has been exonerated of the liability.

2. The factum of the accident is not in dispute and hence the facts are not adverted to herein for the sake of brevity.

3. Learned counsel for the appellants would contend that respondent No.2-Insurance Company has been exonerated only on the ground that the insurance policy in question was fake. It is further the contention of the learned counsel for the appellants that respondent No.2-Insurance Company had filed a written statement a perusal of which would show that in the preliminary objections the only ground taken was that the car was not having fitness to be plied on the road and that the car was not

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insured with respondent No.2-Insurance Company on the date of the alleged accident i.e. 28.01.2016. In para No.15 on merits, it was denied that the vehicle was insured with respondent No.2-Insurance Company. However, no details of any fraud were given. Learned counsel for the appellants would contend that since the plea of the insurance policy being forged and fabricated was not raised in all sincerity, hence, no issue was framed regarding the same and only Issue No.4 was framed i.e. as to whether the terms and conditions of policy cover had been violated by the owner of the offending vehicle. Learned counsel would further contend that in a case where the insurance policy was issued by the present Insurance Company itself i.e. United India Insurance Company Limited and the agent was Vizza Insurance Broking Service Private Limited i.e. the same agent as in the present case, the Tribunal after the passing of the award in the present case on 23.10.2017 allowed the claim petition holding the Insurance Company liable. Against the said award dated 23.10.2017 passed by the Motor Accident Claims Tribunal, Hisar i.e. the same Tribunal as herein, an appeal was preferred before this Court being FAO-1320-2018 and vide order dated 19.03.2018 passed by this Court the award of the Tribunal was upheld holding the Insurance Company liable. Against the said order a Special Leave Petition being SLP No.16953/2018 was preferred which was also dismissed vide order dated 23.07.2018. Learned counsel has further pointed to the statement of RW-1 i.e. the Deputy Manager of United India Insurance Company Limited wherein he has stated that the document was fake and in this regard the Insurance Company had written a letter to the Superintendent

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of Police, Kancheepuram. Ex.R-2 was the complaint sent to the Superintendent of Police, Kancheepuram. Letter written to the Vizza Insurance Broking Service Private Limited was Ex.R-3 regarding the fake document and letters written to the Insurance Regulatory Development Authority (IRDA) was Ex.R-4 and Ex.R-5 written to General Insurance Council. Learned counsel has further pointed out that the accident in the present case took place on 28.01.2016 and the letters being referred to by RW-1 i.e. Ex.R-2 is dated 18.04.2015, Ex.R-3 is dated 07.05.2015 and Ex.R-4 is dated 22.05.2015 which clearly shows that none of these documents relate to the present case. It is further the contention of the learned counsel that no amount of evidence can be looked into in the absence of pleadings and since details of fraud were not given, as required under Order 6 Rule 4 CPC, any evidence to that effect cannot be looked at.

4. *Per contra* learned counsel appearing on behalf of respondent No.2-Insurance Company has contended that the Supreme Court judgment dated 23.07.2018 passed in SLP-16953-2018 challenging the order dated 19.03.2018 passed in FAO-1320-2018 is not binding as the same is without any reasoning. It is further the contention that in para No.5 of the preliminary objections of the written statement and para No.15 of written statement on merits, it was specifically stated that the vehicle was not insured with respondent No.2-Insurance Company. Learned counsel has further referred to an affidavit of Smt. Meena Kumari, who is stated to be the Regional Manager of respondent No.2-Insurance Company, though not a word has been stated in the affidavit regarding her designation. Learned

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counsel has referred to the registration certificate of the offending vehicle in the present case to contend that a comprehensive insurance of the said vehicle was done by ICICI Lombard and that the vehicle was transferred in the name of the owner Umesh Sharma on 01.02.2016 and that the accident took place on 28.01.2016. It is further the contention that the insurance policy cover refers to an insurance policy dated 05.03.2015 in the name of Umesh Sharma. It is, hence, contended that if the vehicle itself was transferred in his name in January 2016 the insurance could not have been issued in his name on 05.03.2015 and hence it was a clear case of forgery as even the previous policy was fake.

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

6. In the present case respondent No.2-Insurance Company filed a written statement raising certain preliminary objections. Preliminary objection No.5 reads as under :

> *'That at the time of the alleged accident, car No.HR-03-J-7350 was being driven in contravention of the terms and limitations to the use of car No.HR-03-J-7350, M.V. Act, therefore, Insurance Company is not liable to pay any compensation., The car was not having fitness to be plied on the road. The car was not insured with the replying respondent on the date of alleged accident i.e. on 28.01.2016'*

Reply to para No.15 on merits reads as under :

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'Averments made in para No.15 of the claim application are incorrect, not admitted, hence denied, car No.HR-03-J-7350 was not insured with the replying respondent on the date of alleged accident and the insurance company is not liable to pay any compensation.'

A perusal of the above reproduced paragraphs from the preliminary objections as well as the reply on merits reveals that no details of any fraud or forgery were given. Though the pleadings under the Motor Vehicle Act are summary in nature, however, the basic principles of CPC would be applicable as per Order 6 Rule 4 CPC in all the cases in which the party relies on any misrepresentation, fraud, breach of trust, willful default or undue influence particulars would be necessary to give the details of the fraud. The Hon'ble Supreme Court in the case of **Bishundeo Narain & Anr. Vs. Seogeni Rai & Ors. [Civil Appeal No.78 of 1950 decided on 04.05.1951]** has held as under :

'It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong

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> *the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6, rule 4, Civil Procedure Code'*

7. In the present case the pleadings itself are woefully missing. There are no details of any fraud or forgery. It is not the case set up by respondent No.2-Insurance Company that the cover policy was not to their knowledge or they did not know as to which insurance policy was being dealt with at the time the written statement was filed. Even if for the sake of the arguments the evidence, which is totally beyond pleadings, is to be looked at, the same fails to establish the case of respondent No.2-Insurance Company. RW-1 the Deputy Manager of respondent No.2-Insurance Company in his statement relied upon certain documents i.e. Ex.R-2 to Ex.R-5 to state that regarding the fake policy complaints had been given to the Superintendent of Police, Kancheepuram and letters have also been written to Vizza Insurance Broking Service Private Limited as well as to the Insurance Regulatory Development Authority and that Ex.R-5 was a letter written to the General Insurance Council regarding the fake policy. A perusal of the document Ex.R-2 reveals that it is a letter addressed to the Superintendent of Police, Kancheepuram which is dated 18.04.2015. The accident in the present case took place on 28.01.2016 and hence the same possibly could not pertain to the present case. The same is the case with Ex.R-3 which is dated 07.05.2015, Ex.R-4 which is dated 22.05.2015 and Ex.R-5 which is dated 22.05.2015 again.

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8. This Court vide order dated 15.02.2024 had directed respondent No.2-Insurance Company to file an affidavit regarding the criminal proceedings which were initiated against Vizza Insurance Broking Service Private Limited and the outcome of the same in connection with the present insurance policy No.01098131140200000650. Pursuant to the order dated 15.02.2024, an affidavit of Smt. Meena Kumari was filed wherein yet again no details of the police complaint or the case lodged against Vizza Insurance Broking Service Private Limited were appended. It is, however, stated that being a remote location there were hurdles in securing the information. Had there being any information the same would have been led in evidence by the Deputy Manager when he stepped into the witness box as RW-1. Hence, it can safely be presumed that there were no criminal proceedings which were initiated by respondent No.2-Insurance Company against their agent. If at all it is a forged and fabricated document, it was obviously prepared in connivance with the officials of respondent No.2-Insurance Company and possibly that would explain why respondent No.2-Insurance Company did not lodge any complaint regarding the same. In the case of 'United India Insurance Company Limited Vs. Moksh & Ors.' the same Tribunal i.e. the Motor Accident Claims Tribunal, Hisar vide award dated 23.10.2017 i.e. after the passing of the award in the present case and in similar circumstances and wherein the same Deputy General Manager appeared and relied on the same very documents, held the Insurance Company liable to pay the compensation. Aggrieved by the said award an appeal being FAO-1320-2018 was preferred by the Insurance Company which was dismissed

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vide order dated 19.03.2018 upholding the award passed by the Tribunal holding the Insurance Company liable. In the said case it was held as under :

> *'The Tribunal in para 29 of the award has dealt with the policy in question being not fake, therefore, insurance company being liable to pay compensation. Admittedly, the insurance company has not cancelled the policy but sought to proceed against its agent by whom the policy in question has been issued. As has been rightly argued by counsel for the claimants, if agent of the insurance company has committed some wrong that may entitle a criminal action against him but insurance company cannot disown its liability to pay compensation under a policy issued by its authorized agent or broker. As per the settled position in law, the principal is liable for the acts of its agent. In this view of the matter, Tribunal has rightly negated plea of the insurance company challenging its liability to pay compensation.'*

9. In FAO-1320-2018 a Coordinate Bench of this Court observed that the Insurance Company had not cancelled the policy therein and held that in case the agent of the Insurance Company had committed some wrong they may be entitled to initiate some criminal action against him, however, the Insurance Company cannot disown its liability to pay the compensation. The said order was challenged before the Hon’ble Supreme Court by filing

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SLP No.16953/2018. The said Special Leave Petition preferred by the Insurance Company was dismissed and the following order was passed :

> *'Heard the learned senior counsel appearing for the petitioner.*
>
> *We are not inclined to interfere with the impugned order passed by the High Court.*
>
> *The Special Leave Petition is, accordingly, dismissed.*
>
> *However, the petitioner contends that because of the fake policy issued in collusion with their agent and the owner, some of the observations made by the Courts may come in their way to pursue their rights.*
>
> *The petitioner is at liberty to pursue criminal remedies available under law.*
>
> *Any observations made by the Tribunal and the High Court does not come I the way of prosecuting their rights particularly taking into consideration the fact that the proceedings before M.A.C.T are summary in nature.'*

10. The argument of the learned counsel for respondent No.2-Insurance Company that the order of the Hon'ble Supreme Court is not binding as the same is without any reasoning is noticed only to be rejected. A detailed order was passed by this Court in FAO-1320-2018 which has since attained finality as the SLP preferred against the said order was dismissed. The Hon'ble Supreme Court has categorically held that the Insurance Company was at liberty to pursue its criminal remedies available

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under the law and that any observations made by the Tribunal and the High Court would not come in the way of prosecuting its rights. The said order dated 19.03.2018, affirmed by the Hon'ble Supreme Court in SLP No.16953-2018 vide order dated 23.07.2018, applies on all fours in the present case. The argument of the learned counsel for respondent No.2-Insurance Company that the owner did not step into the witness box and that they had no chance to cross-examine the owner would be of no avail as in the present case the objection that the policy itself was forged and fabricated was not pressed in all sincerity by the respondent No.2-Insurance Company even before the Tribunal. Issue No.4 was framed which reads as under :

> *'4. Whether the terms and conditions of policy cover has been violated by owner of the offending vehicle ? OPR'*

The onus to prove the said issue was on respondent No.2-Insurance Company. At no point of time was any application filed by respondent No.2-Insurance Company for getting an issue framed regarding the insurance policy being forged and fabricated.

11. In view of the above, the present appeal is allowed and respondent No.2-Insurance Company is held liable to pay the compensation as awarded vide award dated 20.09.2017 passed by the Motor Accident Claims Tribunal, Hisar. The impugned award is modified accordingly. Pending applications, if any, also stand disposed off.

12. It is made clear that respondent No.2-Insurance Company would be at liberty to pursue its criminal remedies as available under the law

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and that any observations made by the Tribunal or herein shall not come in the way of respondent No.2-Insurance Company in prosecuting its rights.

26.02.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No

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