(2019) 07 CHH CK 0133

In the Chhattisgarh High Court

Case No : M.A.(C) No. 608 Of 2014

Branch Manager, Reliance General Insurance Co.Ltd. APPELLANT

Vs

Panna Ram Sahu And Ors RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2019) 07 CHH CK 0133

Hon'ble Judges : Sanjay Agrawal, J

Bench : Single Bench

Advocate : Rohitashva Singh, CK Sahu, AD Kuldeep

Final Decision : Allowed

Judgement

Sanjay Agrawal, J

1. This Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act by Appellant/Non-Applicant No.3/Reliance General Insurance Company Limited questioning the award dated 26.02.2014 passed by the 1st Additional Motor Accidents Claims Tribunal, Raipur (CG) (for short 'the Claims Tribunal') in Claim Case No.47/2012 by which, the Claims Tribunal, while allowing the claim in part, has fastened the liability upon the Insurance Company. The parties to this Appeal shall be referred hereinafter as per their description in the Claims Tribunal.

2. Briefly stated, the facts of the case are that on 09.02.2010 at 9.00 p.m, Applicant-Panna Ram Sahu was coming by his motorcycle bearing its registration No.CG 04 CH 7894 from Tikrapara to Pachpedi Naka, Laxminagar Raipur and as soon as he reached near Pujari Park, it was dashed vehemently by the offending vehicle i.e. motorcycle which was being driven in a rash and negligent manner by Non-Applicant No.1/owner-cum-driver namely Lalchand Jain. The registration number of the said vehicle was CG 04 HA 8275.

3. According to the claim Petition, Applicant-Panna Ram, who was a Carpenter by

profession, used to earn Rs.6,000/- per month and has sustained serious injury on account of the alleged accident and therefore, claimed total amount of compensation to the tune of Rs.4,30,000/- (Four Lakh Thirty Thousand only).

4. Non-Applicant No.1/Lalchand Jain, the owner-cum-driver of the said offending vehicle contested the claim on the ground that the vehicle in question was insured with Non-Applicant No.2/H.D.F.C General Insurance Company Limited and pleaded further that Applicant/Claimant himself was responsible for the alleged accident. While, Non-Applicant No.2/H.D.F.C General Insurance Company Limited contested the claim mainly on the ground that the vehicle in question was not insured on the date when the accident occurred. It is contested further on the ground that the driver of the offending vehicle was not holding the valid and effective driving license.

5. Non-Applicant No.3/Reliance General Insurance Company Limited contested the claim mainly on the ground that the insurance policy, said to have been issued, was a fake one and therefore, no liability could be fastened upon it, as alleged by the Applicant.

6. After considering the evidence led by the parties, it has been held by the Claims Tribunal that the alleged accident occurred on 09.02.2010 at 9.00 pm by the offending vehicle i.e. motorcycle bearing its registration No.CG HA 8275 and it held further that the insurance policy (Ex.P-22C) was not a fake one. In consequence, while allowing the claim in part, awarded a total amount of compensation to the tune of Rs.65,000/- with 6% interest p.a from the date of filing of claim petition till its realization while fastening the liability upon Non-Applicant No.3/Insurance Company.

7. Being aggrieved, Non-Applicant No.3/Reliance General Insurance Company Limited has preferred this Appeal. Shri Rohitashva Singh, learned Counsel for Non-Applicant No.3 (Appellant) submits that the vehicle in question was not insured with its Company and the alleged policy, purported to have been issued by the Company, was in fact a fake one. While inviting the attention of this Court to the alleged policy, marked as Ex.P-22C, it is submitted by him that the registration number of the said vehicle was mentioned therein as CG 04 HA 5275, however, the vehicle in question involved in the alleged accident was a vehicle having its registration number CG 04 HA 8275, distinct from the alleged vehicle as depicted from the alleged policy. He submits further that without considering the statement of Abhishek Singh, examined by Non-Applicant No.3/ Insurance Company as N.A.W.1, the Claims Tribunal has erred in holding that the alleged policy was not a fake one and thereby erred further in fastening the liability upon Non-Applicant No.3 (Appellant)/Insurance Company. He submits further, while inviting attention of this Court to the Cover Note (Ex.D-1C) issued by Non-Applicant No.2/H.D.F.C General Insurance Company Limited, that the alleged offending vehicle was insured with the said Company as well, therefore, in case it has been held that the alleged policy (Ex.P-22C) was not a fake one, then in the said condition, both the insurers would be held to be liable jointly and

severally to indemnify the insured. The award impugned is, therefore, liable to be modified accordingly.

8. On the other hand, Shri C.K. Sahu, learned Counsel for Applicant (Claimant), while supporting the award impugned, submits that the alleged policy was not a fake one and the Tribunal has rightly fastened the liability upon Non-Applicant No.3/Insurance Company.

9. I have heard learned Counsel for the parties and perused the entire record carefully.

10. The main contention of Non-Applicant No.3 (Appellant) is that the insurance policy (Ex.P-22C) was a fake one and therefore, the Appellant/Insurance Company cannot be held liable to indemnify the owner of the said offending vehicle. In order to ascertain the said fact, I have examined the alleged policy (Ex.P-22C) and a bare perusal of it would reveal that it was issued in the printed form of the said Appellant/Insurance Company, i.e. Reliance General Insurance Company Limited having its seal over it for covering the risk of the vehicle bearing its Registration No.CG-04-HA-5275 for the period commencing with effect from 02.07.2009 upto 9 th February, 2010. According to Non-Applicant No.3 (Appellant)/Insurance Company, it is a fake one and in order to establish the said fact, one Abhishek Singh, the Manager (Legal) of the Company was examined as N.A.W-1. According to him, the vehicle in question i.e. motorcycle bearing its Registration No.CG-04-HA-8275, owned by said Lalchand Jain was not insured by its Company as upon the verification of it (policy Ex.P-22C), it was found that the same was not issued by the said Company and has produced a document (Ex.D-23) containing of two pages of its Branch Office, Korba showing the issuance of policies for the concerned period i.e. from 03.06.2009 upto 31.07.2009, which does not contain the issuance of policy regarding the alleged offending vehicle. True it is that the Registration number of the said vehicle issued under the said policy (Ex.P-22C) was different from the offending vehicle, however, merely on this basis, it cannot be held that the vehicle in question was not insured under the said policy as the chassis and Engine number of the alleged offending vehicle was not different as evidenced by other documentary evidence, like Ex.D-1C to Ex.D-4C. Moreover, no offence with regard to its fakeness was lodged till date. As such, merely on mentioning of different Registration numbers of the alleged offending vehicle in the said policy (Ex.P-22C) would not be sufficient to hold that it is a fake one, unless and until it is corroborated by other cogent and reliable evidence. Having failed so, the Claims Tribunal has not committed any illegality in holding that the same is not a fake one as contended by the Appellant/Insurance Company.

11. Pertinently to be noted here further that the aforesaid policy (Ex.P-22C) was going to be expired on 09.02.2010 when the alleged accident occurred at 9.30 p.m. At this juncture, the Cover Note (Ex.D-1C) issued by (Non-Applicant No.2)/ H.D.F.C General Insurance Company Limited is required to be examined. A bare perusal of it would show that owner of the offending vehicle got it insured on

09.02.2010. As such, there were two policies in existence covering the risk of the alleged offending vehicle on the fateful day. It appears further that Non-Applicant No.2/H.D.F.C General Insurance Company Limited, in order to get rid of its liability, has issued another Cover Note (Ex.D-4C) on 10.02.2010, though it was not required to be issued as Cover Note (Ex.D-1C), which was already issued a day prior to it, i.e. on 09.02.2010. No explanation, whatsoever, has been offered in this regard as to why two Cover Notes have been issued. Issuance of these two Cover Notes Ex.D-1C and Ex.D-4C would therefore, lead to an irresistible conclusion that Non-Applicant No.2/H.D.F.C General Insurance Company Limited has acted unfairly and tried to avoid its liability in an illegal manner. The act of H.D.F.C General Insurance Company Limited is highly objectionable and being a Government undertaking, it should have acted not only fairly but should have refrained to avoid its liability in such a manner.

12. Be that as it may, from the fact of issuance of alleged policy (Ex.P-22C) by the Reliance General Insurance Company Limited, vis-a-vis, the issuance of said Cover Note (Ex.D-1C), it is crystal clear that the offending vehicle was insured on the fateful day by both these two Insurance Companies and are therefore, jointly and severally liable to indemnify the insured Lalchand Jain, the owner-cum-driver of the alleged offending vehicle. . 13. Consequently, the award impugned as passed by the Claims Tribunal fastening the liability upon Non-Applicant No.3/ Reliance General Insurance Company Limited alone is not justified and deserves to be and is hereby modified accordingly and it is held that Non-Applicant No.2/ H.D.F.C General Insurance Company Limited is also responsible for the alleged accident along with the Appellant/Reliance General Insurance Company Limited and liable to indemnify the insured. Accordingly, both these Insurance Companies are hereby held jointly and severally liable and Applicant/Claimant is entitled to recover the amount of compensation as assessed by the Claims Tribunal from both these Insurance Companies.

14. In the result, the Appeal is allowed in part to the extent indicated hereinabove. No order as to costs.

