(2006) 04 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3415 of 2003

Gurcharan Singh and Another — APPELLANT

Vs

Joginder Singh and Others — RESPONDENT

Date of Decision : 02-04-2006

Acts Referred:

Motor Vehicles Act, 1939 — Section 100C(2A), 103(A), 96, 96(2)
Motor Vehicles Act, 1988 — Section 149(2), 157, 166

Citation : (2007) ACJ 2205 : (2006) 143 PLR 688 : (2006) 3 RCR(Civil) 841

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Ashit Malik, for the Appellant; Vishal Gupta, for Respondent Nos. 4 and 5 and S.K. Galhotra, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The challenge in the present revision petition is to the order passed by the learned Motor Accident Claims Tribunal, Karnal (for short ''the Tribunal''), on 1.3.2003, whereby an application filed by the petitioners to impaled the Insurance Company of the offending, vehicle, as respondent, was declined.

2. Respondent Nos. 4 and 5 herein sought compensation in the petition u/s 166 of the Motor Vehicles Act, 1988 (for short ''the 1988 Act'') on the ground that on 16.12.1995, their son Mannu alias Rachit has died in a road accident. In the said petition, the Insurance Company was not impleaded as a party but an award was passed by the learned Tribunal on 11.11.1999, awarding a compensation of Rs. 62,000/- along with interest@ 12% p.a.

3. In the present petition, at the request of the petitioners, New India Assurance Company Limited was impleaded as respondent No. 6 on 10.1.2005, since it was the case of the petitioners that the offending vehicle was insured with the said Insurance Company. Thereafter, the learned Counsel for the Insurance Company has sought time to verify the factual position as to whether the offending vehicle

was insured with the Insurance Company.

4. When the matter was taken up for hearing on 31.3.2006, learned Counsel for the Insurance Company produced the photocopy of the Insurance Policy but alleged that the said policy was not issued in favour of the present petitioners but in favour of one Uggar Sain Trading Company, Rice Mills, Uchana. Learned counsel has also relied upon a judgment of this Court reported as Gurdial Chand Bhasin Vs. Anil Kumar and Others, to contend that the Insurance Company cannot be called upon to satisfy the award passed by the learned Tribunal at this stage.

5. However, I am unable to agree with any of the contentions raised by the learned Counsel for the Insurance Company. It is not disputed that the offending vehicle bearing No.HR-05A-4443 was insured on the date of accident vide the policy produced in Court. Section 157 of the 1988 Act makes the Insurance Company liable against third party risk in respect of a vehicle. This is in contradiction to the provisions of Section 103-A of the Motor Vehicles Act, 1939 (for short ''the 1939 Act). In terms of Section 157 of the 1988 Act, where the ownership of a vehicle is transferred in respect of which insurance was taken, the certificate of insurance and the policy described in the certificate is deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Whereas, as per Section 103(A) of the 1939 Act, the certificate of insurance could be transferred only with the consent of the Insurance Company. Therefore, in view of the provisions of Section 157 of the 1988 Act, the first argument raised by the learned Counsel is without any merit.

6. It is the case of the petitioners that in terms of Section 149(2) of the 1988 Act, the Insurance Company is liable to satisfy the award. None of the grounds on which the Insurance Company could defend the action, is available to the Insurance Company or alleged before this Court. Since none of the defences on which the Insurance Company could defend the claim is available to the Insurance Company, therefore, the Insurance Company is liable to satisfy the award.

7. The reliance of the learned Counsel; for the respondent-Insurance Company in Gurdial Chand Bhasin''s case (supra), is not tenable in law. A reading of the judgment leads to an inference that the Insurance Company has sought to defend the action in terms of the defences contemplated under Sub-section 2 of Section 96 of the 1939 Act. But in the present case, apart from the argument that the vehicle has been transferred after the Insurance Policy was issued, the respondent-Insurance Company has not raised any other defence. It is not the case of the Insurance Company that the Insurance Company is entitled to defend the action on any of the grounds contemplated under Sub-section 2 of Section 149 of the 1988 Act. As a matter of fact, it has been held by the Hon''ble Supreme Court in Narendra Kumar and Another Vs. Yarenissa and Others, , while considering the parimateria of provisions of Section 96 of the 1939 Act, that the

initial requirement is merely to issue a notice to the insurer to enable him to file a claim petition. It is then left to the insurer, whether or not it would seek impleadment to defend action under any of the grounds available u/s 96(2) of the 1939 Act (now Sub-section 2 of Section 149 of the 1988 Act). It was held that notice must go to the Insurance Company to raise all or any of the defences available. It was held to the following effect:

On a plain reading of the aforesaid provisions, it seems clear to us that the claims must be preferred against the tortfeasors and notice thereof must go to the Insurance Company and if all or any of the defences set out in Sub-section (2) of Section 96 are available to the Insurance Company and it seeks to be impleaded as a party, it may be so impleaded and allowed to raise all or any of those contentions. The other situation in which the Insurance Company can be impleaded as a party is the one set out in Sub-section (2A) of Section 110-C of the Act. Essentially, therefore, the claim would be against the tortfeasors, in the instant case, the owner and driver of the offending vehicle.

8. The Hon''ble Supreme Court in Urmilla Pandey and others Vs. Khalil Ahmad and ohters, has made the Insurance Company liable even when cover note was produced before the Supreme Court almost 25 years after the accident.

9. In view of the said judgment, it is apparent that the Insurance Company can defend action only on the grounds available under Sub-section 2 of Section 149 of the Act 1988 Act. Since none of the defences are even alleged to be available, the Insurance Company is bound to satisfy the award as passed against its insured.

Consequently, the present revision petition is allowed. The order dated 1.2.2003 is set aside. The Insurance Company is directed to satisfy the award passed by the learned Tribunal on 11.11.1999.