(2006) 08 P&H CK 0313

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 827 of 2003

Inderjit Singh APPELLANT

Vs

Oriental Insurance Co.and others RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:

Citation : (2006) 4 RCR(Civil) 450

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. Binderjit Singh, Advocate.Mr. Jitin Talwar, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. This revision petition has been filed against an order passed by learned District Judge, Bathinda dated 6.1.2003.

2. The Oriental Insurance Company Limited filed an execution application against the petitioner herein for the recovery of an amount of Rs. 3,75,600/ paid as compensation to the claimants in pursuance to the award passed by the learned Motor Accident Claims Tribunal dated 4.3.2002. The petitioner herein filed objection against the execution of the award claiming that in the absence of any judgment and decree having been passed against it no execution was competent. Learned Executing Court by holding that the driving licence of Bihari Lal was not genuine and therefore, there was violation of terms and conditions of the Insurance Policy rejected the objection petition. Learned counsel for the petitioner has vehemently contended that in the absence of any judgment or decree being against him it was not for the Executing Court to proceed against him by deciding the matter on merit holding therein that such driving licence held by the driver was not genuine and therefore, the Insurance Company was competent to recover the amount. In order to appreciate the argument raised by the learned counsel for the petitioner it would be appropriate to refer to the relief granted by the Tribunal which is being sought to be executed. The same reads as under :

"Relief

(30) In view of my findings on the above issues, the claim petition is accepted partly and I announce an award of Rs. 3,75,000/ (Rs. Three lacs seventy five thousand and six hundred) in favour of the claimants. Among the claimants, they will share the amount as under :

1.

Balbir Kaur

: Rs. 2,25,600/

2.

Jaswinder Kaur, Beant Singh and Ranbir Singh (children of deceased Dharam Singh)

: Rs. 50,000/ each.

As regards payment of interest is concerned, I find that the claimants have been negligent in producing their evidence. They closed their evidence only on 29.8.2001. As such, the claimants are held entitled to the grant of interest at the rate of 9% per annum from 1.8.2001 till the date of payment. The claimants are also held entitled to the grant of costs. Counsel fee is assed at Rs. 1,000/. Costs will be recoverable only from respondent Nos. 1 and 2."

3. Learned counsel for the petitioner relied upon the judgment of this Court in the case of Usha v. Madan Lal, 2003(1) RCR(Civil) 398 to contend that the Insurance Company can recover the compensation paid from the owner or driver by way of separate proceedings. To the same effect is the judgment of this Court in National Insurance Co. Ltd. v. Dr. R.K. Duggal and others, 2002(1) RCR(Civil) 326 : 2002(1) PLR 39. As against this, learned counsel for the respondent placed reliance on a judgment of Supreme Court in National Insurance Co. Ltd. v. Swaran Singh and others, 2004(2) RCR(Civil) 114 : AIR 2004 SC 1531 wherein the Hon''ble Supreme Court has been pleased to lay down as under :

"105. The summary of our findings to the various issues as raised in these petitions are as follows :

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish `breach'' on the part of the owner of the vehice; the burden of proof wherefor would be on them.

(v) The Court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise) does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner''s licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with subsection (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by subsection (3) of Section 168 of the Act, the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in subsection (4) with proviso thereunder and subsection (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular Court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

The reading of the summary herein would show that it was open for the Tribunal in the given circumstances to pass an order that recovery be effected without making recourse to separate suit. In the absence thereof the Insurance Company has to proceed independently as in that case the petitioner would have liberty to contest the claim by proving the factum of his having acted bona fide on the basis of the fake licences and in that case no recovery would be liable to be made from him.

In view of this, the order passed by the Executing Court cannot be sustained, accordingly revision is allowed. The execution application moved by the respondentInsurance Company is dismissed. However, it will be open for the Insurance Company to take appropriate proceedings in accordance with law to recover the amount if they are so entitled.

