
(2016) 08 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 2749 of 2016(O&M)

National Insurance Company Ltd.

APPELLANT

Vs

Jaspal Kaur @ Jaspreet Kaur @ Jass

RESPONDENT

Date of Decision : 27-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2017) 2 PLR 34

Hon'ble Judges : Harinder Singh Sidhu, J.

Bench : Single Bench

Advocate : Mr. Ravinder Arora, Advocate assisted by Mr. Neeraj Khanna, Advocate, for the Appellant-Insurance Company

Final Decision : Disposed Off

Judgement

Harinder Singh Sidhu, J.- CM No.10246-CII of 2016 :

Application is allowed.

For the reasons stated therein, delay of 7 days in filing the appeal is condoned.

Main Appeal :

This is an appeal by the Insurance Company (National Insurance Company Ltd) against the Award dated 20.03.2015 in MACT Case No.15 of 2015 of the Motor Accident Claims Tribunal, Ferozepur (for short "the Tribunal") for the death of Karamjit Singh son of Satnam Singh in a vehicular accident.

2. Brief facts of the case are that on 18.01.2015, Karamjit Singh (deceased) along with Veerpal Kaur, Rashpal Kaur, etc. was travelling in Innova Car bearing registration No. DL-4C-AE/4603. The vehicle was being driven by Amarjit Singh and they were going to village Lohian to attend a marriage. At about 9.45 am, when they reached in the area of village Pheroke, the offending car bearing registration No.PB 29 K-T/1516 being driven rashly and negligently by respondent No.3-Hardeep Singh came from the back side at a high speed,

without blowing any horn and hit the Innova car. As a result thereof, Amarjit Singh lost control over the Innova car and it rammed into a tree and thereafter turned turtle. Karamjit Singh died at the spot and other passengers also sustained injuries.

3. On the statement of Satnam Singh, FIR No.16 dated 18.01.2015, under Sections 279/304-A IPC was registered at Police Station Zira against respondent No.3-Hardeep Singh, driver of the offending car.

4. The legal representatives of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 30 years and was working as skilled welder at Malkiat Engineering Works, Talwandi Bhai and earning Rs. 20,000/- per month.

5. Upon notice, respondents No.3 and 4 filed joint written statement, stating that no accident ever took place with the offending vehicle being driven by respondent No.3- Hardeep Singh. Appellant's insurer filed separate written statement and pleaded collusion.

6. Pleadings of the parties led to the framing of following issues:-

"1. Whether Karamjit Singh son of Satnam Singh had died on account of injuries sustained by him in a motor vehicular accident which took place on 18.01.2015, at about 9.45 AM, near Government Godown, in the area of village Pheroke, due to rash and negligent driving of car bearing registration No.PB 29 K-T/1526 by respondent No.1? OPP

2. Whether the claimants are entitled to the compensation, if so to what extent and from whom? OPA

3. Whether the petition is not maintainable? OPR

4. Whether the respondent No.1 was not having valid and effective driving licence at the time of accident? OPR-3

5. Relief."

7. Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of vehicle No. PB 29 K-T/1516 by respondent- Hardeep Singh. In the absence of proof of income of the deceased, the Tribunal assessed his income at Rs.9000/- per month, enhanced it by 50% towards future prospects and then considering the number of dependants (2) deducted 3rd towards personal and living expenses of the deceased. So dependency of the claimants comes to Rs.9000/- per month and the annual dependency of the claimants comes to Rs.9000 x 12= 1,08,000/-. It applied the multiplier of 16 and total loss of income was assessed at Rs.17,28,000/-. Besides, Rs.1,00,000/- for loss of consortium and Rs.25,000/- for funeral expenses were also awarded. In all, compensation of Rs.18,53,000/- along with interest was awarded.

8. Challenging the impugned award, the sole argument raised on behalf of the appellant ? insurer is that on the date of accident, the offending vehicle was not registered with the Registration Authority as the temporary registration made at the time of purchase of the vehicle had expired after one month of its issue. It is stated that the vehicle was purchased on 07.11.2014 and it was required to be got permanently registered within one month, but it was so done only on 02.03.2015. Accordingly, it is contended that the offending vehicle was not registered on the date of accident i.e. 18.01.2015 as the temporary registration had already been expired after one month of the purchase of the vehicle and permanent registration was not got done, therefore, there was breach of the terms and conditions of the insurance policy, as such, the appellant ? insurer is not liable to indemnify the loss caused by the vehicle.

9. At the very outset, it needs to be mentioned that this point was never the part of the pleadings before the Tribunal. A reading of the impugned award shows that the insurer had taken the usual defence of not having valid driving licence at the time of accident, involvement of the offending vehicle in the accident and questioning the age, avocation and income of the deceased, but the point of non-registration of the vehicle at the time of the accident was never raised. No issue regarding this was framed and there is consequently no discussion regarding the same in the award.

10. Even otherwise there is no merit in this contention of the Ld. Counsel for the appellant.

11. Section 149 of the Motor Vehicles Act, 1988 (for short "the Act") enumerates the conditions, where, the insurer is not liable to pay the sum to satisfy the judgment or award. The relevant provisions of the Section read:

"149. Duty to insurers to satisfy judgments and awards against persons insured in respect of third party risks.-

(1) xxx xxx xxx

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the Court, or as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely, -

(a) that there has been a breach of specified condition of the policy, being one of the following conditions, namely,-

(i) a condition excluding the use of the vehicle,-

(a) for the hire or reward where the vehicle is on the date of the contract of

insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor-cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as it referred to in sub-section (1) or in such judgment as is referred to in sub-section(3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be."

12. A perusal thereof makes it clear that all such defences have been specifically mentioned in the statute where the insurer is not liable to indemnify the loss caused to the third parties by the insured vehicle, and the defence taken by Ld. Counsel for the appellant is not one of them. In other words, the non-registration of the vehicle is not one of the defences enumerated under Section 149(2) of the Act.

13. The issue as to whether in case of non-registration of the vehicle, the insurer is liable to indemnify the loss caused due to the accident has been considered by different High Courts.

14. The Karnataka High Court in C.B. Virupaksha Alias Shivu v. Shivakumar And Another, 2001 ACJ 1410, after taking note of the aforesaid provisions, concluded:

"8. From the above said section, it is clear that the defences open to the Insurance Company are only those mentioned under Section 149(2) of the Act. The non-registration of the vehicle is not one of the defences enumerated under Section 149(2) of the Act. Therefore, the Insurance Company is not entitled to take defence of the non-registration of the vehicle on the date of the accident. Further, the grounds of defences have been specified in Section 149(2) of the Act and no other ground of defence can be added to the said section. Under sub-section (7) of Section 149 of the Act, the Insurance Company is not entitled to avoid its liability to any person entitled to the benefit of any judgment and award

referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2) of Section 149 of the Act. Therefore, I am of the view that the Tribunal was not right in absolving the liability of the Insurance Company on the ground that there was no registration of the vehicle as on the date of the accident. When such being the case, the Insurance Company shall not be allowed to raise the defence of non-registration as it falls outside the scope of Section 149(2) of the Act in this appeal."

15. This High Court also considered the question in *National Insurance Company Ltd. v. Daya Chand and another*, 2015 ACJ 2592, wherein, it was observed that non-registration of the vehicle can be a ground for the Transport Authorities to take action for violation under the Motor Vehicles Act, but it cannot be a reason to automatically presume that violation of the provisions of the Motor Vehicles Act will amount to violation of the terms of the insurance contract between the insurer and insured. It was observed:

"The counsel states without producing the copy of the insurance policy that the vehicle is required to be used as per provisions of the Motor Vehicles Act and therefore, if the Act stipulated that a temporary permit would expire in 30 days and the permanent registration had not been obtained, he was doing an act which was against the provisions of the Motor Vehicles Act and therefore, that shall also exclude the liability. I reject the contention. For any violation of terms of the policy that had provided for specific exclusion, the insurance company is bound to take upon itself the burden of proof and discharge the same by adducing appropriate evidence. If the petitioner cannot produce the copy of the policy that provides exclusion of liability, it must be only be taken that the burden has not been discharged. The statement that the user in contravention of the provisions of the Motor Vehicles Act will also provide an exclusion of liability is a fallacious argument. It can only provide for taking appropriate action by the transport authorities for any violation under the Motor Vehicles Act. There can be no automatic presumption that violation of provisions of the Motor Vehicles Act will also amount to violation of terms of the contract. The liability of the insurer is driven through contractual obligations and if the clause excluding liability is not specifically submitted and brought before Court by way of evidence, the decision taken by the Permanent Lok Adalat cannot be violated."

16. The question whether non-registration of a vehicle amounts to breach of insurance policy was also answered in negative by Kerala High Court in *Joby Thomas and Ors. v. Annamma Augustine and Ors.* , 2012 ACJ 848. The High Court examined the case from two views ? whether there is breach of insurance policy and whether the defence of nonregistration of the vehicle is available to the insurer. Taking note of the decision of Karnataka High Court in *Virupaksha's* case (*supra*), it was concluded that because of this violation under the Motor Vehicles Act, the insurer cannot be exonerated from its liability. It was observed:

"... .. The learned counsel for the appellants had invited my attention to Section 39 of the Motor Vehicles Act which deals with the provision for registration of the

vehicles. Under that section, no person shall drive any motor vehicle without such a registration. When there is any default committed by the person, the law takes care of and under Section 192 of the M.V. Act, when there is contravention of Section 39, it is made punishable with fine of Rs.5,000/- etc. So the learned counsel would contend that when there is non compliance of the mandatory provisions of the M.V. Act, the Act itself takes care of it to realise the fine.

4. So whether the non - registration would amount to breach of policy conditions would be the next question. The parties who are insurer and the insured are governed by the terms of the contract entered into between them. So if there is breach of the policy conditions, then necessarily the insured has to reimburse the insurer.

5. The learned counsel appearing for the parties had made available before me a copy of the policy and had also taken me through the conditions of the policy which are six in numbers and the learned counsel for the insurance company in the trial court had raised a contention that breach of the policy conditions will come within the ambit of "reliability trial" which is condition No. 6. Without any fear of contradiction, it can be said that reliability trial has nothing to do with the non registration of the vehicle. When there is no breach of the policy conditions, the question of the insurance company to get entitlement of reimbursement does not arise.

6. This matter can be viewed in another angle and it has been viewed so by the Karnataka High Court in the decision reported in Virupaksha v. Sivakumar, 2001 KHC 948. It was also a case where there was temporary registration for the vehicle till 30.11.1991. The vehicle was registered only on 24.1.1992. The accident took place on 12.1.1992 or in other words there was no valid registration for the vehicle on the date of accident. Whether the insurance company can raise the contention that it is not liable to pay the amount because of non registration of the vehicle on the relevant date of the accident was considered.

The learned judge referred to Section 149 of the M.V. Act which deals with specific defences available to the insurance company under the Act. All the clauses had been extracted and the learned judge came to the conclusion that non registration of the vehicle is not one of the defences enumerated under Section 149 of the Act. Therefore the insurance company is not entitled to take defence of non - registration of the vehicle on the date of the accident. So viewed in both the angles viz., that as there is no breach of policy conditions and as there is no defence available to the insurance company on account of non registration , it has to be held that the insurance company is not liable to be exonerated from the liability. The finding to the contra by the tribunal is incorrect and it is liable to be set aside and I do so."

17. In view of the above discussion, the submission made by on behalf of the appellant - insurer cannot be accepted. No other point was raised.