(2013) 02 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 6616 of 2012 (O and M)

National Insurance Company Ltd. APPELLANT

Vs

Rohit Sharma and Others RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2014) 1 ALLMR 27

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : R.C. Kapoor, for the Appellant;

Judgement

A.N. Jindal, J.—The award dated 3.11.2012 passed by the Motor Accident Claims Tribunal, Jalandhar, whereby the claimant-respondent No. 1 was awarded compensation to the tune of Rs. 2,62,358/- with interest @ 7.5% per annum, on account of the disability suffered by him, is under challenge. It was further ordered that Insurance company would make the payment, however, it would be at liberty to recover the same from Sukhwinder Singh respondent No. 2, who had allegedly stolen the vehicle. The sole question raised in this appeal is: "Whether the insurance company could be held liable u/s 149(2)(a)(ii) of the Motor Vehicle Act, 1988 (for short ''the Act'') without holding the owner of the vehicle as liable?"

2. Apparently, the vehicle had been stolen without the knowledge of the owner by Sukhwinder Singh-respondent No. 1 and the accident did not take place on account of the negligence of the person employed or deputed by the owner, as per Section 96(2)(b)(ii) of the Act. It is also apparent that there was no violation of the conditions of the policy of insurance and the theft of the vehicle by Sukhwinder Singh-respondent No. 2 was also beyond the control of the owner. The vehicle was duly insured at the time of the accident. The owner himself becomes sufferer due to the theft. The aim and object of getting the vehicle insured is to the liability by the Insurance Company in such exigencies if the vehicle is insured for theft. Thus, the argument that the owner was responsible for the liability, if any, on account of the accident of the vehicle, which was

stolen, is of no consequence.

3. In this regard, reference can be made to the judgment United India Insurance Company Ltd. Vs. Lehru and Others, wherein it was observed as under:--

Now let us consider Section 149(2). Reliance has been placed on Section 149(2)(a)(ii). As seen in order to avoid liability under this provision it must be shown that there is a ''breach''. As held in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, and Sohan Lal Passi Vs. P. Sesh Reddy and others, the breach must be on the part of the insured. We are in full agreement with that. To hold otherwise would lead to absurd results. Just to take an example, suppose a vehicle is stolen. Whilst it is being driven by the thief there is an accident. The thief is caught and it is ascertained that he had no licence. Can the insurance company disown liability? The answer has to be an emphatic ''No''. To hold otherwise would be to negate the very purpose of compulsory insurance. The injured or relative of person killed in the accident may find that the decree obtained by them is only a paper decree as the owner is a man of straw. The owner himself would be an innocent sufferer. It is for this reason that the legislature, in its wisdom, has made insurance, atleast third party insurance compulsory. The aim and purpose being that an insurance company would be available to pay. The business of the company is of insurance. In all business there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with which is laid down in aforementioned cases, viz. That in order to avoid liability, it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured.

Similar view was taken by this Court in the case of Oriental Insurance Company v. Smt. Lalita and others FAO No. 1024 of 2009. Thus, there are no grounds to hold that the owner must be held liable alongwith the insurance company.

No substantial question of law arises for determination in this appeal. Dismissed.