

(2005) 02 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1041 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

Hargovind Yadav and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 149(2), 170
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338, 427

Citation : (2005) 3 ACC 521 : (2005) 140 PLR 484 : (2005) 2 RCR(Civil) 482

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : P.S. Saini, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The New India Assurance Company (for brevity "the Company") has invoked the jurisdiction of this Court under Article 227 of the Constitution by filing the instant petition for quashing order dated 24.11.2004 passed by the Motor Accident Claims Tribunal, Faridabad. The Tribunal has declined the prayer of the Company for a declaration that there is collusion between the parties to defraud the petitioner. Consequently, the application filed by the Company u/s 170 of the Motor Vehicles Act, 1988 (for brevity "The Act") has been dismissed by recording the following short order:

"Learned counsel for the petitioners has made statement closing his evidence after tendering copy of post-mortem report.

Reply to the application u/s 170 of M.V.Act also Filed. Heard. Since the respondent Nos. 1 and 2 are contesting the petition and have filed written statement controverting the facts stated in the petition, so it cannot be said that there is any collusion between the petitioners and the respondents 1 and 2. Accordingly, the application u/s 170 of the Act is hereby dismissed."

2. Claimant respondents 1 to 4 have filed a claim petition before the Tribunal claiming compensation for a sum of rupees ten lacs against respondent Nos. 5 and 6 who are the driver and owner of the offending vehicle and the company. The claim has arisen on account of the death of one Smt. Sushila Devi wife of Hargovind Yadav, claimant-respondent No. 1 in the vehicular accident on 23.3.2002 at Hodal. The allegations made by the claimant-respondents are that the accident was caused due to the rash and negligent driving of driver respondent No. 5 and the offending car bearing registration No. HR-51-C-8953 in which the deceased Smt. Sushila Devi was travelling in the vehicle alongwith her daughter Renu. Respective written statements by contesting the claim petitions were filed by the driver-respondent No. 5 and the owner respondent No. 6. It has further been asserted that no FIR was lodged with the police with regard to the alleged accident and therefore no investigation could have been undertaken. The registration Clerk Rajinder Kumar RW2 from the Registration Authority office of Motor Vehicle, Faridabad is alleged to have stated that the vehicle was registered in the name of Ram Kumar Sharma on 18.6.1998 and the same was subsequently transferred in the name of driver-respondent Vikram on 11.3.2002. It has further been asserted that the owner-respondent No. 6 had never been the owner of the said vehicle. On the basis of the aforementioned evidence on record an application u/s 170 of the Act was filed by the Company alleging that the claim petition have been filed by the claimants in collusion with driver-respondent No. 5 and owner respondent No. 6. The prayer made in the application was to seek permission to take all defences available to company and contesting the claim petition on merits. As already noticed, the application has been dismissed on 24.11.2004 (Annexure P.1).

3. When the petition came up for consideration on 21.2.2005 time was granted to the learned counsel for the petitioner to place copies of the claim petition and written statement on record. The needful has been done by the counsel for the petitioner.

4. Learned counsel for the petitioner-company has argued that owner-respondent No. 6 has never been the owner of the vehicle which is a crucial fact indicating the collusion between the claimant-respondent on the one hand and the driver and owner respondent Nos. 5 and 6 respectively on the other hand. Learned counsel has placed reliance on the statement made by Rajinder Kumar RW2 showing that the offending vehicle was registered in the name of Ram Kumar Sharma on 18.6.1998 and the same was subsequently transferred in the name of Bikram, driver-respondent No. 5 on 11.3.2002. It has further been asserted that owner-respondent No. 6 has never remained owner of the vehicle.

5. Learned counsel has further argued that in accordance with the provisions of Section 149(2)(b) of the Act if a policy has been obtained by the assured who has not been the owner of the vehicle then it would be void on the ground that it was obtained by non disclosure of material fact. Therefore, it must be concluded that owner-respondent No. 6 is non entity and has been joined for setting up

false claim.

6. After hearing the learned counsel at a considerable length I have reached the conclusion that no finding can be recorded by this Court to the effect that the claim petition by the claimant-respondent Nos. 1 to 4 has been filed in collusion with driver-respondent No. 5 and owner respondent No. 6 who have contested the claim of the claimant-respondents 1 to 4 by filing written statements. A perusal of the written statement shows that the allegations made by claimant-respondents 1 to 4 have been controverted in material particular. It is also not correct that no first information report regarding accident was given to the police because a perusal of the claim petition shows that the police at Police Station Hodal has recorded DDR of the accident although no FIR under Sections 279, 337, 338, 427 and 304A IPC was registered. Owner respondent No. 6 has even gone to the extent of denying the accident and has denied the rash and negligent driving of driver respondent No. 5. It has, however, been asserted that on the date of accident owner respondent No. 6 was not the owner and that vehicle HR-51-C-8953 was insured with the company in the name of owner respondent No. 6 w.e.f. 31.7.2001 to 30.7.2002. Therefore, it cannot be concluded that there is any collusion between the parties.

7. The other argument based on Section 149(2)(b) of the Act has also not impressed me because the policy can be declared void if it was obtained by non disclosure of a material fact. Section 149(2)(b) of the Act reads as under:-

"149(2) No sum shall be payable by an insurer under sub Section (i) 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) x x x x

(b) that the policy is void on the 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.

8. A perusal of the afore-mentioned section shows that if a policy has been obtained by non disclosure of material fact or by representation of fact which was false in some material particular then such a policy can be declared void. Owner respondent No. 6 has merely stated that on the date of accident i.e. on 23.3.2002 she was not the owner. It is far from saying that she has never been the owner or that she has nothing to do with it. The whole evidence is yet to be examined and the findings are yet to be recorded. It is far fetched on the basis of available evidence to infer any collusion between the parties or declare that the assurance policy in the name of owner respondent No. 6 is void. Therefore, there

is no merit in the aforementioned contention.

For the reasons stated above, this petition fails and the same is dismissed.