(2013) 08 P&H CK 0226

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 115 of 2011

New India Assurance Company Ltd. APPELLANT

Vs

Smt. Anuradha and Others RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2014) ACJ 1597 : (2013) 172 PLR 594

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Advocate : Ashwani Talwar with Mr. S.P. Dhamija, for the Appellant; Inderjit Sharma, and Ex-parte, Respondent No. 5, for the Respondent

Judgement

Vijender Singh Malik, J.—This is an appeal brought by New India Assurance Company Limited against the award dated 19.08.2010 passed by learned Motor Accidents Claims Tribunal, Sangrur (for short ''the Tribunal''). Vide the impugned award, the claim petition of Smt. Anuradha and others has been allowed awarding a sum of Rs. 19,26,000/-. In this case, the responsibility to satisfy the award has been held to be joint and several of the respondents. The grievance of the appellant is that recovery rights have not been given to it against the owner-driver of the vehicle. It is a case where Bhola Singh, a 36 years old Head Constable with Punjab Police met with fatal accident. A claim had been made by his dependents for Rs. 40,00,000/-, which was resisted by the respondents. Respondent No. 2 had claimed that the truck was plied without valid route permit and, therefore, the answering respondent is not liable to satisfy the award.

2. Learned counsel for the appellant has contended that the offending truck was being plied in Punjab State without a valid route permit. According to him, no evidence was led to prove that the truck bearing registration No. UP-11G-7629 was having a valid route permit for being plied in the State of Punjab or even in the State of U.P. He has further submitted that argument was raised before learned Tribunal that the offending truck was not insured with the insurance company and it was being plied without requisite documents. Learned Tribunal

appears to have noticed copy of insurance policy as Ex.R-1, a copy of registration certificate Ex.R-2 and a copy of driving licence as Ex.R-3 and without taking into account the absence of route permit, awarded compensation in favour of the claimants and held the respondents jointly and severally liable to satisfy the same and gave no recovery rights to the appellant.

3. Learned counsel for respondents No. 1 to 4 has nothing to say in the matter.

4. None has put in appearance on behalf of respondent No. 5. Respondent No. 5, the owner was served for 03.05.2012 and on non appearance of anyone on his behalf, he was proceeded against ex-parte. However, notice was again ordered to be issued to respondent No. 5, this time by publication by way of munadi. Still service was effected and none appeared for him.

5. On the submissions made by learned counsel for the appellant, the insurer that the offending truck was being plied without requisite documents, documents produced on behalf of the owner have been copy of the insurance policy, copy of registration certificate and copy of driving licence. No route permit or copy thereof was produced on the record. Not only the copy of route permit authorizing the offending vehicle to be plied in the State of Punjab but there was no route permit authorizing it to be plied in U.P. was also there. Learned Tribunal ignored this aspect and recorded finding against the insurer on production of copy of insurance policy, copy of registration certificate and copy of driving licence.

6. Now having it clear before me that despite their being objection, the owner failed to prove that the truck was being plied in the State of Punjab under a valid route permit, it has to be noticed that it been held by Hon''ble Supreme Court of India in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others,) that the insurer cannot be held liable to satisfy the award once it is proved that the insured vehicle was being plied without permit.

7. On the question as to whether in such circumstances, the insurance company should be directed to satisfy the award in the first instance and then to recover the said amount from the insured, it has been laid down in the same case that the insurer may be asked to satisfy the 3rd party claim/award and recover from the insured by executing the award like a decree against him. Following the ratio of Chella Bharathamma''s case supra I hold that the insured vehicle was being plied without a route permit and it amounted to violation of the terms and conditions of the insurance policy and, therefore, the insurer was not liable to satisfy the award. However, the insurer could be asked to satisfy the 3rd party claim and then to recover the said amount from the insured by executing the award as a decree against him.

Consequently, the appeal succeeds and is allowed giving right to the appellant to recover the award money from the insured by executing the award like a decree against him.

