

(2013) 01 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : X Obj No. 12-CII of 1997 and F.A.O. No. 1363 of 1995

New India Assurance Company Ltd.

APPELLANT

Vs

Sulakhan Singh and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : (2013) 01 P&H CK 0008

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : L.M. Suri and Mr. Neeraj Khanna, for the Appellant; Rajesh Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeal is by the insurance company on the issue of liability. The contention was that the accident had taken place on

09.10.1989 but the policy of insurance had been taken only subsequently without informing the fact of accident on 11.10.1989. The policy of

insurance which was produced before the Court had itself revealed that the payment of premium of Rs. 264/- was made through a cheque dated

11.10.1989. In the column relating to cover note, no particulars had been filled meaning thereby that there was no cover note therefor. However,

at the time of trial the owner had produced a cover note dated 6.10.1989 that is on a day prior to the date of accident. The manager of the

insurance company had been examined to state that the cover note book containing Sr. No. 353367 had been issued only on 23.10.1989 and it

could not have been therefore available with the agent to issue a cover note earlier. The Tribunal rejected the contention and going by what the

cover note stated that it had been issued on 06.10.1989, it made the insurance company liable. A cover note is a provisional contract issued to the insured under certain contingencies such as when amount has to be realized or when a risk is to be undertaken from a particular time and inspection of the vehicle is required to be done and such like instances. If a cover note itself specifies any particular time for the commencement of the policy of insurance, it would bind the company. The cover note in this case undertakes the assumption of risk from 06.10.1989 till 05.10.1990.

Having regard to the fact that the insurance company was pleading for position that the cover note was fraudulent and the original of the book containing the particular number was issued only subsequent to the accident on 23.10.1989 and the cover note produced in Court could not have been issued on 06.10.1989, the insurance company was relying on the insurance policy itself that showed that the policy was issued on 11.10.1989 and the receipt of the premium was made through a cheque by the owner only on 11.10.1989. The genuineness of the cover note could have been vouched by the owner of the vehicle insured, if he had given evidence that he had tendered some payment on the same day on 06.10.1989. The payment of premium assumes significance because Section 64(VB) of the Insurance Act, 1938 mandates that no insurer shall assume any risk in India in respect of any insurance business on which payment is not ordinarily payable outside India unless and until the premium payable was received by him or was guaranteed to be paid by such person in such a manner and within such time as may be prescribed or unless and until deposit of such sum as may be prescribed was made in advance in the prescribed manner. The essential aspect that could fasten a liability on the insurer was only on the payment of premium. It could be even a promise to pay premium to a subsequent date by a guarantee within such time as may be prescribed. In this case, it is seen that the payment itself has been made only through a cheque on 11.10.1989 and unless there was evidence that the insurance company was undertaking a risk on a promise to make payment on a subsequent date, the insurance company could not have been made liable. We have no such evidence and case put forward by the insurance company that this cover note must have been procured fraudulently through an agent of the insurer is probalised also by the fact that the book containing the serial number itself was issued

only on 23.10.1989. If there had been no valid policy of insurance at the relevant time then there is no question of making the insurer liable.

2. Learned counsel appearing on behalf of the claimant would contend that as third party claimant, he cannot be affected by any defect in the

policy. The best that the insurance company could have in such a situation is to undertake the liability and recover the same from the insured for

any violation of terms of policy. This argument, in my view, misses the point that the question of making the insurer liable arises only if there is valid

policy of insurance and the right of recovery could be directed in situations where there is shown to be violation of terms of policy. Such violation is

contemplated only when there existed a policy of insurance in the first place at the relevant time of accident. If there was no valid policy of

insurance, the question of making the insurer liable does not arise. The insurance company could not have been made liable in this case since I am

of the view that the cover note itself has been subsequently manufactured and the policy of insurance could have commenced only from

11.10.1989, the date when premium was paid and a policy of insurance was taken. The liability cast on the insurance company is, therefore, not

tenable. It appears that at the time when the appeal was admitted, the Court had allowed for withdrawal of the amount subject to security. The

insurance company will be at liberty to enforce the security in the manner known to law.

3. Learned counsel appearing on behalf of the claimant would plead also for enhancement of compensation. The counsel would also point out to

the fact that the claimants were parents and they had lost their son at young age of 23 years. It was in evidence that the deceased had applied for a

loan of Rs. 80,000/- for purchase of buffaloes and the attempt was to show that he was doing dairy business and he was making a decent living.

The Tribunal took the income to be Rs. 2,000/-, made a deduction of 50% and applied a multiplier of 10 to provide for compensation of Rs.

1,20,000/-. Considering the fact that the mother was herself 60 years old at that time, I would make a moderate increase from Rs. 1,20,000/- to

Rs. 1,50,000/-. The additional amount would attract interest @7.5% from the date of petition till the date of payment. This amount shall be

recovered only against the owner of the truck, which was involved in the accident and no portion of the amount shall be recovered against the

insurer. Since the claimant pleads indigency and gross hardship if the amount already collected by the claimant were to be recovered by the insurance company, in equity I would direct the insurance company to first explore the possibility of recovery of the amount, if they have made the payment, from the insured and if the amount is not realized, to enforce the security what they have obtained. With these modifications, the appeal is allowed. The cross objection is also allowed making the enhancement in the manner referred to above.