(2016) 03 P&H CK 0293

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 3541 of 2005 (O&M)

Oriental Insurance Company Limited — APPELLANT

Vs

Guddi and others — RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 149

Citation : (2016) 3 PLR 159

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Mr. Ashwani Talwar, Advocate, for the Appellant; Mr. R.K. Hooda, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J. (Oral) - The appeal is at the instance of the insurer who has been made liable to pay the compensation on an assumption that the vehicle had been insured with the insurance company. In the claim petition, the claimants have stated that the details of insurance will be produced by the owner and driver. The insurance company has stated in its response to the particular column referred to above as a matter of record and has stated in the preliminary objections that it was denied that the vehicle was insured. The written statement of the insurer can only traverse what is contained in the petition and cannot anticipate what the owner states. The Court has observed that the owner''s assertion that the vehicle had been insured with the insurance company has not been controverted in the reply of the insurer. The reasoning is erroneous for the insurer need not controvert what the co-respondent states. The statement that there was no insurance with the company in answer to the petitioner''s assertions was sufficient for an owner to produce positive evidence that the vehicle had been insured.

2. I asked the counsel on behalf of the owner about the policy and the counsel says that the party is illiterate and he does not know about it. Illiteracy is a

serious malady but it cannot insulate him against legal liability when he had to prove what he is required to prove. Counsel appearing for the owner makes a query to the court as to how the insurer was able to say that the vehicle bearing registration No. HR- 32-5421 had been insured and that the vehicle with registration No. 5921 was not insured. Admittedly, the vehicle which is involved was the vehicle bearing registration No.5921. If the insurance company was volunteering an information about the insurance with reference to vehicle No. 5421 it was trying to assist the Court that the best information which was possible with the insurer. This can hardly be understood as saving the owner for securing a presumption that a number similar to which he owned namely 5921 must have been insured.

3. The Tribunal has adopted a strange logic which cannot be sustained. The award against the insurer is erroneous and it is set aside. The liability shall be only on the insured and driver. If the insurance company has already made an payment it shall effect recoveries against the owner and driver and not against the claimant. If there is any portion of the claim which is still not recovered by the claimant, the claimant shall exercise the recovery only against the owner and driver and not against the insurer. The appeal is allowed on the above terms.

