

(2018) 07 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Form Order No. 3874, 3875 of 2015 (O&M)

Rajveer Singh Gurjar and another

APPELLANT

Vs

Veer Singh and another

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166

Citation : (2018) 07 P&H CK 0036

Hon'ble Judges : TEJINDER SINGH DHINDSA, J

Bench : Single Bench

Advocate : J.P.Sharma, Rajnish Malhotra

Final Decision : Dismissed

Judgement

This order shall decide FAO No.3874 of 2015 titled as Rajveer Singh Gurjar and another Vs. Veer Singh and another and FAO No.3875 of 2015 titled

as Rajveer Singh Gurjar and another Vs. Mithlesh and others as both these appeals arise out of the composite award dated 02.02.2015 passed by the

Motor Accident Claims Tribunal, Rewari while deciding MACT Case No.85 of 2013 and MACT Case No.84 of 2013.

Briefly noticed, MACT Case No.85 of 2013 was a claim petition under Section 166 of the Motor Vehicles Act, 1988 filed by the widow, two minor

sons and aged mother of Anil Kumar who is stated to have died in a motor vehicle accident on 31.03.2013. MACT Case No.84 of 2013 was a claim

petition under Section 166 of the Motor Vehicles Act, 1988 filed by Veer Singh claiming compensation for the injuries suffered in a motor vehicle

accident on 31.03.2013. Offending vehicle i.e. HIWA Trailer bearing registration No.HR-55-P-3154 in both the claim petitions was the same and

which had struck against the motorcycle on which Anil Kumar and Veer Singh

were riding and on account of which Anil Kumar died and Veer Singh sustained grievous injuries.

In the award, a compensation amount of Rs.9,74,600/-has been passed in favour of the claimants on account of death of Anil Kumar in claim petition

No.85 of 2013. Compensation amount of Rs.79,100/- has been awarded in favour of the claimant Veer Singh on account of injuries suffered by him in claim petition No.84 of 2013.

These two connected appeals have been filed by the driver and owner of the offending vehicle assailing the award dated 02.02.2015 passed by the

MACT, Rewari whereby the entire liability of compensation to be paid to the claimants has been fastened upon them and the Insurance Company stands exonerated.

Learned counsel representing the appellants in these two connected appeals has argued that on the date of accident i.e. 31.03.2013 the vehicle in

question bearing registration No.HR-55-P-3154 was fully insured and as such Insurance Company (respondent No.2 i.e. Tata AIG Insurance

Company) is fully liable to pay the compensation amount to the claimants. Counsel further urges that the premium of the insurance had been given to

the authorized agent of the Insurance Company and who issued a legal and genuine policy on 29.03.2013 and as such the liability towards

compensation pertaining to the accident that occurred on 31.03.2013 has to be on the Insurance Company.

Counsel for the appellants has been heard at length and the Lower Court Records have been perused.

The only question that arises for consideration in these two appeals is as to whether appellants are liable to pay the amount awarded to the claimants

or the Insurance Company is liable to pay the same? It would be apposite to notice that even though a specific defence had been taken by the

Insurance Company that the contract of insurance was void ab initio on account of mis-representation and concealment of material facts and,

accordingly, Insurance Company was not liable to pay compensation, if any, but no specific issue on such account had been framed.

Be that as it may, such aspect has been contested before the Tribunal and evidence in this regard was also led.

The Tribunal in its detailed order has discussed the entire evidence placed before

it. The date of accident is 31.03.2013. Tata AIG Insurance

Company issued a cover note Ex. RW1/B upon an insurance certificate Ex. RW1/C having been produced by the appellants apparently reflecting that

the vehicle was insured with New India Insurance Company Limited from 30.03.2012 to 29.03.2013. Upon verification, the insurance certificate Ex.

Rw1/C has been found to be fake and fabricated. Upon appreciation of evidence on record, a finding has been recorded by the Tribunal that the

offending vehicle was insured with M/s Shree Ram General Insurance Company Limited from 24.10.2011 to 23.10.2012. There was no insurance

cover for the vehicle after 23.10.2012. The accident took place on 31.03.2013. With the ulterior objective to cover up the intervening gap and to avoid

any inquiry from Tata AIG Insurance Company, the appellants produced a forged insurance certificate Ex. RW1/C to show that vehicle was insured

with New India Insurance Company Limited from 30.03.2012 to 29.03.2013.

I find sufficient weight in the submission advanced by counsel representing the Insurance Company that if at the relevant point of time, forged

insurance certificate Ex. RW1/C had not been produced, the cover note Ex. RW1/B under such circumstances would not have been issued.

Section 149 of the Motor Vehicles Act, 1988 reads in the following terms:-

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been

effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147

(being a liability covered by the terms of the policy) 1[or under the provisions of section 163A] is obtained against any person insured by the policy,

then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the

provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he

were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest

on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) 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) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

Â© for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified

for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(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.

(3) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign

judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by

it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law

of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section

(1), as if the judgment were given by a Court in India: Provided that no sum

shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(6) In this section the expression "material fact" and "material particular" means, respectively a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation. For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means

an award made by that Tribunal under section 168.

Perusal of the statutory provisions would clarify that no sum shall be payable by an insurer where a policy has been obtained by non-disclosure of

material fact or by representation of fact which was false in some material particular. The Delhi High Court in the case of Oriental Insurance

Company Limited Vs. Rakesh Kumar and others 2013 (7) RCR (Civil) 782 has examined the scope and ambit of Section 149 of the Act and held that

if the policy was obtained by non-disclosure of material fact or by misrepresentation of facts, Insurance Company would not be under any obligation to

indemnify the insured or even to pay to third parties.

In view of the discussion hereinabove, no infirmity is found in the view taken by the Tribunal whereby the Insurance Company has been absolved of

the payment of compensation amount in favour of the claimants and entire liability has been fastened upon the appellants herein.

There is no merit in these two appeals and the same are, accordingly, dismissed.