(2010) 10 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 6036 of 2010 (O and M)

The Bajaj Allianz General Insurance Company Limited — APPELLANT

Vs

Kaptan Singh — RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 149(4), 279, 304A

Citation : (2010) 10 P&H CK 0052

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The appeal is by the Insurance Company denying liability on the ground that the vehicle insured with them had not been involved in the accident. The accident was said to have taken place at 6:30 P.M. on 29.07.2007. The FIR had been registered on an information from the PGI, Chandigarh that a patient had been brought to the hospital with injuries in a motor accident. A statement had been recorded by the police from Kaptan Singh, who made a reference to a three wheeler with no registration number as having caused the accident. Later, at the trial, the said eyewitness gave details of how the three wheeler had stopped at the place of the accident and that a criminal case had also been registered against the driver Subhash Chand. On the issue whether the insured''s vehicle had been involved, the Tribunal had observed that the first Respondent had been charged for offences under Sections 279 and 304A IPC and the driver had not even come to the Court to deny the involvement of the vehicle. The Tribunal, therefore, observed that in the absence of the evidence from the driver or the owner denying the accident or its involvement, the evidence given through PW1 and supported by what the investigations by the police had revealed, the Tribunal had no difficulty in finding that the insured''s vehicle had been involved in the accident. The matter has been dealt with by the Tribunal taking into account all the relevant facts and evidence and I do not think that there is any scope to assail such a finding.

2. The Tribunal has already found that the driver did not have a valid driving licence and has made the insurer liable to pay the claims and has availed to the insurer a right of recovery. For any defect in driving licence, the Insurance Company could never be totally absolved. The law is too well laid down to doubt and particularly the issue relating to a liability of the insurer even for violation of terms of the policy has been laid down in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and affirmed by the Hon''ble Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, . The Hon''ble Supreme Court has dealt with the issue of the primary liability of the Insurance Company to a third party by referring to all the case laws on the subject.

3. Sub-section (4) of Section 149 of the Act says that so much of the policy as purports to restrict the insurance of the person insured by reference to any condition shall "as respects such liabilities as are required to be covered by a policy., be of no effect". The proviso to the said sub-section is important for the purpose of considering the question involved in this case and hence that proviso is extracted below:

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.

4. Similarly, in this context Sub-section (5) is equally important and hence that is also extracted below:

149. (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.

5. A reading of the proviso to Sub-section (4) as well as the language employed in Sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

6. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the

insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

7. The appeal is dismissed.

