(2012) 03 P&H CK 0420

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3215 of 2004

The New India Assurance Company Ltd. APPELLANT

Vs

Rattan Singh and others RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2012) 166 PLR 829

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : L.M. Suri, with Mr. Deepak Suri, for the Appellant;

Final Decision : Allowed

Judgement

L.N. Mittal, J.—This is revision petition under Article 227 of the Constitution of India by insurer (New India Assurance Company Ltd.) assailing order dated 18.10.2002, Annexure P/5 passed by learned Motor Accident Claims Tribunal, Faridabad (in short, the Tribunal) thereby dismissing application Annexure P/4 filed by the insurer for recovery of compensation amount along with interest (paid by the insurer to claimant Rattan Singh respondent no. 1 herein) from insured respondent no. 3. Claim petition filed by respondent no. 1 - claimant herein under the Motor Vehicles Act against respondents no. 2 and 3 herein as driver and owner respectively of the alleged offending vehicle and against the petitioner herein as insurer of the said vehicle was allowed by the Tribunal vide award dated 3.1.2002 Annexure P/1/A thereby awarding compensation of Rs 29,000/-to the claimant along with interest @ 9% per annum. The insurer in its written statement in the claim petition had taken the plea that the driver of the vehicle was not holding valid driving licence and therefore, insurer is not liable to pay the compensation amount. Issue no.3 was framed in the claim petition on this plea of the insurer. The Tribunal in award dated 3.1.2002 decided the said issue vide paragraphs no. 12 and 13. Relevant paragraph no. 13 of the said award is reproduced hereinunder:

"The onus to prove this issue was upon the insurance Company. The insurance Company has produced the driver as PW1 who has stated that he was not holding a valid driving licence. If it is so, the insurance Company is liable to make payment to the petitioner who is a third party. However, the insurance company can recover this amount from the owner of the vehicle if so desires. The issue is answered accordingly."

2. Insurer filed appeal against the said award in this Court disputing its liability to pay the compensation amount. Said appeal bearing FAO No.1856 of 2002 was dismissed in limine by this Court vide order dated 8.4.2002, Annexure P/2, inter alia observing as under:-

"A perusal of the order of the Tribunal shows that this contention has already been noticed and it has been found that the driver had stated that he was not holding a valid driving licence. However, the Tribunal in para-13 has held that even in these circumstances, the Insurance Company was liable to make the payment to the claimant, who is a third party and has further observed that the Insurance Company can recover this amount from the owner of the vehicle. This finding is in complete conformity with the law laid down by the Supreme Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., ."

3. Pursuant thereto, the insurer made payment of the compensation amount and interest to the claimant by depositing with the Tribunal and then made application Annexure P/4 for recovery of the said amount with interest from the insured owner of the vehicle (respondent no. 3 herein/respondent no. 2 before the Tribunal). The said application has been dismissed by the Tribunal vide impugned order Annexure P/5 observing that proper course for the insurer is to file suit for recovery and to establish that there was willful breach of terms and conditions of the insurance policy by the insured. Feeling aggrieved, insurer has filed the instant revision petition.

4. None is appearing for respondents no. 2 and 3. Earlier they were represented by a counsel but now none is appearing for them. Notice in this revision was not issued to claimant - respondent no. 1 as his claim has already been satisfied.

5. I have heard counsel for the petitioner and perused the case file.

6. Counsel for the petitioner contended that the Tribunal in its award Annexure P/1/A and also this Court in order Annexure P/2 held the insurer to be entitled to recover the amount from the insured because the driver was not holding valid driving licence and therefore, insurer is entitled to recover the amount in question by filing execution proceedings and there is no necessity of filing separate suit to seek recovery of the amount. Reliance in support of this contention has been placed on judgment of Hon''ble Supreme Court in Pramod Kumar Agrawal and others vs Mushtari Begum and others, 2005 (3) PLR 540.

7. There is considerable merit in the contention. In view of judgment of Hon''ble Supreme Court in the case of Pramod Kumar Agrawal and others (supra), the

insurer is not required to file suit for recovering the amount from the insured. The insurer can straightway initiate proceeding before the executing court for recovery of the amount (paid by the insurer to the claimant) from the insured in view of award Annexure P/1/A of the Tribunal and order Annexure P/2 of this Court. In the instant case, driver of the vehicle stepped into witness box and stated that he was not holding valid driving licence. Consequently, nothing more was required to be proved to establish willful default of terms and conditions of the insurance policy by the insured who gave the vehicle to un-licenced driver. Even otherwise, insurer has been given right of recovery from the insured by the Tribunal in award Annexure P/1/A as well as by this Court in order Annexure P/2. Consequently, the insurer is entitled to seek recovery of the amount from the insured by directly initiating execution proceedings instead of filing separate suit.

8. For the reasons aforesaid, I find that impugned order Annexure P/5 passed by the Tribunal is patently perverse and illegal and suffers from jurisdictional error. The Tribunal as executing court refused to exercise jurisdiction which vested in it to recover the disputed amount by execution proceedings. Accordingly, the instant revision petition is allowed. Impugned order Annexure P/5 passed by the Tribunal is set aside. Execution proceedings initiated by insurer petitioner by filing application Annexure P/4 are restored to the files of the Tribunal. The Tribunal is directed to proceed with the matter, in accordance with law for recovering the amount in question from the insured. The petitioner is directed to appear before the Tribunal on 26.4.2012.