(2013) 09 P&H CK 0450

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 4078 of 2009

United India Insurance Company Ltd. APPELLANT

Vs

Gurmit Kaur and Others RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 3 ACC 256 : (2014) 173 PLR 436 : (2014) 1 PLR 48

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Judgement

Vijender Singh Malik, J.—This is an appeal brought by United India Insurance Company Ltd., the insurer against the award dated 28.05.2009 passed by learned Motor Accidents Claims Tribunal, Amritsar (for short ''the Tribunal'') vide which the appellant has been held liable to pay compensation. The facts required to be noticed in this appeal are mat the accident took place at 11.15 PM on 19.12.2006 while the insurance cover note which was issued at 5.00 PM on 19.12.2006 had 10.00 AM on 20.12.2006 as the effective date and time of commencement of insurance for the purpose of the Act.

2. Learned Tribunal took the vehicle to be insured the moment the cover note, was issued i.e. at 5.00 PM on 19.12.2006 and as the accident took place at 11.15 PM on 19.12.2006 it has been held that the vehicle was insured at the time of the accident and the liability of the insurance company would be there to satisfy the award.

3. Learned counsel for the appellant has contended that the insurance cover note would be there for the vehicle with effect from 10.00 AM on 20.12.2006 and as the accident occurred earlier to that, though after issuance of the cover note, the vehicle was not covered by the insurance agreement According to him, learned Tribunal has been wrong in holding that the vehicle was covered by the insurance policy. He has cited before me a decision of Hon''ble Supreme Court of India in J. Kalaivani and Others Vs. K. Sivashankar and Another, . It was a case of gap in the period of cover-age. The earlier policy expired by midnight of 07.02.1996

and the owner obtained another policy, which was made specifically operative from 10.00 AM on 08.02.1996. The accident occurred at 4.30 AM on 08.02.1996. Finding that there was no policy from twelve in midnight till 10.00 AM, the insurance company is held not liable. He has cited before me another decision on the point reported as Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, where the cover note was having an express mention of effective date and time of commencement of insurance as 2.55 PM and the accident occurred at 2.20 PM, it has been held that the insurance company is not liable.

4. Learned counsel for respondents No. 3 and 4 has submitted, on the other hand, that learned Tribunal has been right in holding that the insurance had covered the vehicle at the time of the accident. He has supported himself by two decisions in this regard. The first is a decision of High Court of Judicature at Madras in Oriental Insurance Co. Ltd. Vs. Vedathal and Another, . IN the reported case, the policy was obtained at 10.30 AM, on the date of the accident i.e. 20.05.1991 and the accident occurred at 2.00 PM, the date of commencement mentioned in the policy had been there from midnight on 21.05.1991. It was held that when the premium was paid and accepted by the insurance company on 20.05.1991, the effective date of commencement of the policy would be 20.05.1991. Similarly is the ratio of another decision of High Court of Jharkhand at Ranchi in The National Insurance Company Limited, Sakchi Branch Vs. Ram Chandra Gope and Others, .

5. No decision of Hon''ble Supreme Court of India laying down a preposition of law contrary to that of J. Kalaivani''s and Sunita Rathi''s cases supra has been brought to my notice. In the face of the decisions of Hon''ble Supreme Court of India, the ratio of the decision in Vedathal''s and Ram Chandra Gope''s cases supra cannot be followed.

6. The cover note Ex. R-4 clearly mentions the effective date and time of commencement of the insurance as 20.12.2006 at 10.00 A.M. The accident occurred earlier to that and at that time the vehicle in question was not insured. In these circumstances, I find that the vehicle was not insured at the time of the accident and liability of insurance company is not there to indemnify the owner of the offending vehicle. Consequently, the appeal is allowed and the appellant is exonerated from its liability to satisfy the award. The liability to pay compensation shall be of respondents No. 1 and 2 only.

