
(2016) 07 P&H CK 0047

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No.10134 of 2016

Komal Sharma

APPELLANT

Vs

National Insurance
Company Limited

RESPONDENT

Date of Decision: July 12, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, Section 39, Section 43

Citation: (2017) 1 PLR 241

Hon'ble Judges: Mr. Rakesh Kumar Jain, J.

Bench: Single Bench

Advocate: Mr. Devender Gors, Advocate, for the Petitioners

Final Decision: Dismissed

Judgement

Rakesh Kumar Jain, J. - The petitioners have challenged the order dated 19.01.2015 passed by the Insurance Company repudiating the claim of the petitioners and order dated 25.03.2016 passed by the Permanent Lok Adalat (PUS), Kurukshetra, dismissing the application filed by the petitioners under Section 22-C of the Legal Services Authority Act, 1987.

2. In short, Bharat Sharma (since deceased) was the owner of the motorcycle bearing temporary registration No.HR99SR-TEMP-0845, which was insured with respondent No.1-Insurance Company for the period from 20.08.2014 to 19.08.2015. In a vehicular accident occurred on 23.11.2014, Bharat Sharma suffered serious injuries and died. A DDR No.4 dated 24.11.2014 was lodged in Police Station Ladwa. According to the terms and conditions of the policy, the insurance company was liable to pay a sum of Rs.1,00,000/- to the legal heir of the deceased on account of personal accident risk cover. The claim was contested by the Insurance Company on the ground that there was a breach of the terms and conditions of the insurance policy as the temporary registration certificate was valid for 30 days i.e. upto 19.09.2014 and the accident took place on

23.11.2014 and in between, the deceased did not apply for the permanent registration number. These facts are not disputed that the temporary registration certificate issued on 20.08.2014 was valid for 30 days and had expired on 19.09.2014 but the said motorcycle was being used by deceased Bharat Sharma with the temporary registration number when he died on 23.11.2014. The Lok Adalat dismissed the application while interpreting Sections 39 and 43 of the Motor Vehicles Act, 1988 and relying upon a judgment of the Supreme Court in the case of Narinder Singh v. New India Assurance Company Ltd. and others, 2014(4) RCR (Civil) 272.

3. Aggrieved against that order, the present petition has been filed in which it is argued that once the accident had taken place during the currency of the valid insurance policy, the respondent-insurance company was liable to pay the insured amount and the Lok Adalat had committed an error in dismissing the application only on the ground that the temporary registration number had already expired after the period of 30 days and there was no permanent registration number on the said motorcycle, which was involved in the accident.

4. I have heard learned counsel for the parties and examined the available record.

5. In order to appreciate the contention raised by the counsel for the parties, it would be relevant to refer to Sections 39 and 43 of the Act, which are reproduced as under:-

"39. Necessity for registration.- No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."

"43. Temporary registration.- (1) Notwithstanding anything contained in section 40 the owner of a motor vehicle may apply to any registering authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issued in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable:

Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or any unforeseen circumstances beyond the control of the owner, the period may, on payment of such fees, if any, as may be prescribed, be extended by such further period or Periods as the registering authority or other prescribed

authority, as the case may be, may allow.

(3) In a case where the motor vehicle is held under hire purchase agreement, lease or hypothecation, the registering authority or other prescribed authority shall issue a temporary certificate of registration of such vehicle, which shall incorporate legibly and prominently the full name and address of the person with whom such agreement has been entered into by the owner."

6. While interpreting the aforesaid provisions, the Supreme Court in the case of Narinder Singh's case (supra) held as under:-

"13. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.

14. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

7. Counsel for the petitioners has relied upon two decisions of this Court rendered in the cases of Reliance General Insurance Company Limited v. Rakesh Kumar and another, 2016(2) PLR 594 and National Insurance Company Limited v. Daya Chand and another, 2015(2) PLR 448.

8. The facts of the Reliance General Insurance Company Limited's case (supra) are that the insured had purchased a Bolero car. It was insured for the period from 19.09.2007 to 18.09.2008. The car was stolen on 02.01.2008 and FIR No.3 was registered on 03.01.2008. The claim was settled with the insurance company by the insured @ Rs.5,60,032/- towards full and final settlement but the insured did not collect the cheque, which was though prepared, rather filed a petition before the Permanent Lok Adalat (PUS) under Section 22-C of the Act of 1987. The temporary registration number of the

said vehicle had expired on 18.10.2007 whereas the vehicle was stolen on 02.01.2008 without a permanent registration number or extended temporary registration number, if permitted by law. The application filed under Section 22-C of the Act of 1987 was allowed by the Permanent Lok Adalat and the writ petition filed by the insurance company was dismissed on the ground that at the time when the vehicle was stolen, it was not being plied and, thus, there was no violation of Section 39 of Act. Incidentally, the decision of the Supreme Court in Narinder Singh's case (supra) was not brought to the notice of the Hon"ble Court at the time of decision in which it has been categorically held that using the vehicle on the public road without any permanent registration is a fundamental breach of terms and conditions of the policy. Therefore, this judgment relied upon by the petitioners is not applicable.

9. In National Insurance Company Limited's case (supra), the insured claimed the damage to his vehicle. His claim was repudiated by the insurance company on the ground that the vehicle was being run on temporary number which had expired at the time of accident. Against the order of the Permanent Lok Adalat, the writ petition was filed in which the decision of the Supreme Court in Narinder Singh's case (supra) was relied upon by the insurance company which has not been followed on the ground that the Supreme Court was considering the case of a claim made against the insurance company where the insurance policy itself had expired on 11.01.2006, whereas the accident had taken place subsequently and it was thus observed that the exoneration of the insurance company in Narinder Singh's case (supra) was a completely different situation as there was no policy of insurance at the relevant time. It was further held that the fact that the temporary registration had expired was merely incidental and it did not principally go into the reckoning of the Supreme Court for exonerating the insurance company as the exoneration obtained was on a different ground. Unfortunately, the decision rendered in the National Insurance Company Limited's case (supra) appears to have been based upon the catch words, otherwise there is not a whisper in the entire judgment that the insurance policy had expired on 11.01.2006. The judgment is, thus, per incuriam.

10. In Narinder Singh's case (supra), the insurance company had purchased a Mahindra Pick-up BS-II 4WD vehicle and got it insured for Rs.4,30,037/- for the period from 12.12.2005 to 11.12.2006. The vehicle was temporarily registered for one month. The said period had expired on 11.01.2006. However, the vehicle met with an accident on 02.02.2006 and got damaged. The surveyor appointed by the insurance company assessed the loss @ Rs.2,60,845/- but the insured claim was repudiated on the ground that the vehicle was not registered after the expiry of the temporary registration. The insured approached the District Forum under the Consumer Protection Act, 1986. The Forum directed the Insurance Company to indemnify the insured to the extent of 75% of Rs.4,30,037/- along with interest @ 9% per annum. The insurance company and the insured both went in appeal to the State Commission. The State Commission passed a common order and disposed of both the appeals, allowing the appeal of the insurance

company and dismissing the complaint of the insured. Aggrieved against the decision of the State Commission, revision was preferred by the insured before the National Commission, which was also dismissed and hence, the SLP was filed before the Supreme Court. A specific issue was framed by the Supreme Court which finds mention in para 11 of its judgment and read as under:-

"Whether the National Commission is correct in law in holding that the appellant is not entitled to claim compensation for damages in respect of the vehicle when admittedly the vehicle was being driven on the date of accident without any valid registration as contemplated under the provisions of Section 39 and Section 43 of Motor Vehicles Act."

11. This question has been answered in paras 13 and 14 of the said judgment, which have already been reproduced in the earlier part of this order.

12. Thus, in view of the aforesaid discussion, there is no error in the order passed by the Permanent Lok Adalat (PUS) while dismissing the application filed under Section 22-C of the Act of 1987.

13. Consequently, the present writ petition is hereby dismissed though without any order as to costs.