IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.146 of 1995
Date of Decision: January 19, 2015

The Oriental Insurance Company Ltd. ...Appellant

Versus

Radha Devi and others ...Respondents

FAO No.147 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Sarasti Devi and others ...Respondents

FAO No.148 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Asha Rani and others ...Respondents

FAO No.149 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Chhabil Dass others ...Respondents

FAO No.150 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Savitri and others ...Respondents

FAO No.151 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Maya Devi and others ...Respondents

FAO No.152 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Bahadur and others ...Respondents

FAO No.153 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Banarsi Devi and others ...Respondents

FAO No.154 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Krishna Devi and others ...Respondents

FAO No.155 of 1995

The Oriental Insurance Company Ltd. ...Appellant

Versus

Santosh Kumari and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Bhupesh Dogra, Advocate
for the appellant-Insurance Company.

Mr. Ajay Jain, Advocate
for the respondents.

FATEH DEEP SINGH, J.

All the appeals detailed above are by the same very appellant-M/s Oriental Insurance Company Limited being an outcome of same very award dated 20.8.1994 pertaining to the same very accident involving similar facts and law are being disposed off by this common judgment for the sake of brevity.

The factual matrix that necessitates reproduction from the remnants of the burnt records spell out that on 28.6.1991 around 7.30 a.m. a Matador vehicle bearing registration No.HNB-1154 being driven by respondent-Suraj Bhan, owned disputably between respondent-Charanjit Singh Chhabra and Sita Ram and insured with appellant was ferrying passengers. It is alleged that due to the rash and negligent driving of the driver of this vehicle in the area of village Neolikalan, the vehicle due to the fault of its driver lost control and hit the roadside tree and as a consequence of which, the occupants received multiple injuries. Though, it is alleged that five of the occupants died instantaneously and remaining about ten passengers sustained injuries and were rushed to Civil Hospital, Hisar.

It is as a consequence of these casualties/injuries various claimants preferred claim petitions, in all numbering ten detailed as under:-

Sr. No.	MACT Case No.	Title
1	MACT Case No.7 of 1993	*Radha Devi & another vs. Suraj Bhan & others*
2	MACT Case No.14 of 1993	*Sarasti Devi & others vs. Suraj Bhan & others*
3	MACT Case No.13 of 1993	*Asha Rani vs. Suraj Bhan & others*
4	MACT Case No.11 of 1993	*Chhabil Dass & another vs. Suraj Bhan & others*
5	MACT Case No.9 of 1993	*Savitri & another vs. Suraj Bhan & others*
6	MACT Case No.15 of 1993	*Maya Devi & another vs. Suraj Bhan & others*
7	MACT Case No.12 of 1993	*Bahadur & another vs. Suraj Bhan & others*
8	MACT Case No.10 of 1993	*Banarsi Devi vs. Suraj Bhan & others*
9	MACT Case No.16 of 1993	*Krishana Devi & others vs. Suraj Bhan & others*
10	MACT Case No.8 of 1993	*Santosh Kumari & others vs. Suraj Bhan & others*

The learned Motor Accident Claims Tribunal, Hisar through an impugned common award passed on 20.8.1994 disposed off all these petitions by virtue of which the respective claim petitions stood allowed and varying amount of compensation were awarded to the claimants along with interest @12% per annum. However, the learned Tribunal allowed this compensation against the driver, the registered owner and the Insurer of the vehicle while exonerating the alleged subsequent purchaser Sita Ram. The same has been challenged in these different appeals by the Insurer before this Court.

Heard at length learned counsel for the parties and upon perusal of the records. The sole contention which has been raised by the counsel for the appellant in his arguments is over the liability that has been imposed upon the appellant-Insurer qua this compensation amount. From the arguments of the two sides, it permeates that on the date of the accident vehicle in question was insured by virtue of insurance policy proved as Ex.R2 and which is an Act policy (third party). Though, with much fanfare learned counsel for the appellant has sought to assail that Matador vehicle though is a passenger vehicle but was being used for commercial purposes without there being any documentation in this regard which is sought to be controverted by the counsel for the other side on the grounds that no such evidence has come on the records. Suffice to hold from the own proven stand of the claimants, it bears out that around 15 persons were travelling in the Matador vehicle plus the driver when the accident took place. Section 2(22) of the Motor Vehicle Act, 1988 (in short, 'the Act') defines that any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers excluding the driver, for hire or reward is termed as a Maxicab, whereas, Section 2(29) terms any motor vehicle constructed or adapted to carry more than six persons excluding the driver to be covered under the definition of Omnibus. It is not the case evident from the records that it is a private service vehicle and as reflected from the impugned award is that this vehicle was being used to ferry persons for hire and, therefore, by that very use comes within the ambit of contract carriage. Though, no such contract has been brought on the records and there is nothing to reflect that any permit defined under Section 2(31) had been issued in respect of this vehicle by a State or Regional Transport Authority or any authority prescribed under the Act authorising use of such a vehicle as a transport vehicle. Thus, by that analogy, the vehicle was clearly being used in contravention of the rules and the law when the accident took place.

The learned counsel for the two sides do not dispute that the finding on issue No.1 that the accident took place due to the rash and negligent driving of the driver of the vehicle has attained finality as none has challenged this finding and so is the case pertaining to the quantum of the compensation so awarded by the Tribunal which pertains to issue No.2

Though, it is sought to be assailed with much force and vehemence as to the ownership of the vehicle in question. Admittedly, and as is proved pertaining to issue No.3, if Sita Ram was the owner or Charanjit Singh? Though, Charanjit Singh claims that on 15.6.1991 he had sold the vehicle to Sita Ram and, thus, he has no connection with it and while testifying as RW2 Charanjit Singh has reiterated this stand and lend credence to his averments through depositions of RW3 Ved Parkash, RW4 Subhash Chand Makkar and RW5 Satya Devi, Copy Clerk, Senior Sub Judge, Hisar by placing reliance upon document consisting of writing dated 15.6.1991 proved as Ex.R3 to the effect that he sold the vehicle for ₹32,000/- to Sita Ram and received ₹26,000/- on that day and the balance amount, a month thereafter. Though, he has examined Scribe, RW4 Subhash Chand Makkar and which evidence has not been controverted by Sita Ram, who has failed to step into the witness box to rebut the stand of Charanjit Singh and it is also proved on the records that it was on the superdari application Ex.P5 of Sita Ram the vehicle was released on superdari and, therefore, at the most in the absence of any proof of vehicle having been transferred in the name of Sita Ram the same still remains in the name of Charanjit Singh, who is deemed to be the registered owner of this vehicle. Therefore, in view of the position of law laid down in ***2003 ACJ 1595 SC*** titled as ***'P.P. Mohammad v. K. Rajappan and others'*** and ***2001 ACJ 2059 SC titled as 'Dr. T.V. Jose v. Chacko P.M.'*** the registered owner as well as the possessor of the vehicle are liable and the findings of the learned Tribunal exonerating and absolving Sita Ram-respondent certainly needs to be set aside and it is held that he is also liable being a possessor of the vehicle at the time of accident. The learned Tribunal has taken a pure whimsical and lackadaisical approach by concluding that Insurance policy Ex.R2 cannot be legitimately taken into evidence when it is the admitted stand of the claimants as well as that of the Insurer that the vehicle was insured by virtue of Ex.R2 and having regard to the fact that being proceedings summary in nature stricter principles of Evidence Act are not to be applied. Insurance policy Ex.R2 certainly is a legitimate piece of evidence readable so. Thus, the findings to that extent needs to be set aside.

The learned counsel for the appellant could not convince this Court by his arguments, how a policy under the Act for 3rd party keeps away the liability of the Insurer. Since the victims are third parties stand covered by this policy and the heirs of the deceased being legal representatives certainly the Insurer cannot shrug off from its responsibility in compensating them. Thus, the claimants reserve their right to recover the amount from the Insurer at the first instance as well.

In the light of these discussions as detailed above, since the matador vehicle was being driven in contravention of the Act and the Rules without a valid permit, the registered owner-Charanjit Singh, possessor of the vehicle-Sita Ram and driver-Suraj Bhan too are jointly and severally liable. However, the Insurer is given recovery rights on account of this violation in regard to the use of this vehicle. The Insurer shall be entitled to recover the compensation amount so awarded and recovered, if so, from the registered owner-Charanjit Singh, possessor of the vehicle-Sita Ram and driver-Suraj Bhan jointly and severally. The findings of the Tribunal thus have lost sight of this vital fact and, therefore, the same is modified to that extent. As is apparent from the records much stress in all these matters have been laid upon the ownership and nothing has permeated qua the driving licence of the driver-respondent, Suraj Bhan keeping in view the nature of the vehicle involved as to its legality and validity. The Insurer thus, shall be at liberty to raise such an issue in appropriate proceedings before the executing Court.

In the light of foregoing discussions all these appeals of the appellant-Insurer are thus, partly allowed to that extent, however, with no costs.

(FATEH DEEP SINGH)
JUDGE

January 19, 2015
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