IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.616 of 2004 (O&M)
Date of Decision:14.10.2015

National Insurance Company Ltd.

….Appellant

Versus

Smt. Jasminder Kaur and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Argued by: Mr. Rajbir Wasu, Advocate for the appellant.

None for the respondents.

NAVITA SINGH, J.

1. The Motor Accidents Claims Tribunal, Ludhiana (Tribunal for short), vide award dated 16.12.2003, granted compensation to the tune of Rs.2,56,000/- to respondents No.1 and 2 for the death of their son Jasbir Singh.

2. The Insurance Company filed the appeal challenging the award on the ground that no compensation was payable to respondents No.1 and 2 and the award was not in consonance with law. No one appeared for the respondents.

3. Counsel for the appellant argued that the case of the claimants was that on 30.9.2001, the deceased was helping respondent No.3 in reversing the vehicle No.HR-37-9174 in his house. Respondent Amarjit Singh without waiting for signal from Jasbir Singh, negligently reversed the truck and struck against Jasbir Singh, who was crushed between the truck and the pillar of the house. It was contended that in such circumstances, where the accident had not occurred at a public place, liability of the Insurance Company would not be there. He relied on the judgment of Madras High Court titled Nagarathinam Vs. Murugesan and others 1991 ACJ 673. Counsel for the appellant referred to Section 147 of the Motor Vehicles Act, 1988 (Act for short), the relevant part of which reads as under: -

"147. **Requirements of policies and limits of liability**.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) …………

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)---

(i) against any liability which may be incurred by him in respect of the death of or bodily 1(injury to any person, including owner of the goods or his authorized representative carried in the vehicle) or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;"

4. The victim here was a third party and, therefore, it was argued on behalf the appellant that the accident, if at all, having occurred in the private premises of the owner, the Insurance Company would not be liable. Though under Section 166 of the Act, application for compensation can be filed for the nature of accident given in sub-section (1) of Section 165, yet the limits of the liability of the Insurance Company are prescribed in Section 147 of the Act. The accident here had occurred out of the use of the vehicle but not in a public place. The driver cannot be said to be negligent because the persons standing behind a truck, needs to be careful. It is not a case of failure of brakes or any other technical fault in the vehicle due to which the deceased was hit.

5. The view taken by the Madras High Court is, therefore, subscribed to. The Insurance Company, therefore, will not be liable. The appeal is allowed and the award is modified to the extent that the Insurance Company shall not be liable and the compensation would be payable by the owner.

(NAVITA SINGH)
JUDGE

14.10.2015
Ishwar

Whether to be referred to reporter: Yes