IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

FAO No.2579 of 2005 (O&M)
Date of Decision:09.01.2015

Dharam Chand

….Appellant

Versus

Mange Ram and another

….Respondents

(2) FAO No.5324 of 2004 (O&M)

Mange Ram

….Appellant

Versus

Dharam Chand and another

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. T.C. Dhanwal, Advocate for the appellant in FAO No.2579 and for respondent No.1 in FAO No.5324.

Mr. Babbar Bhan, Advocate for
Mr. Vinod S. Bhardwaj, Advocate for respondent No.1 in FAO No.2579 and for the appellant in FAO No.5324.

Mr. Neeraj Khanna, Advocate and
Mr. Sanjeev Pabbi, Advocate for respondent No.2-National Insurance Company Ltd. in FAOs No.2579 and 5324.

<u>NAVITA SINGH, J.</u>

1. One of the appeals was filed by injured Mange Ram for enhancement of the compensation, which was granted to the tune of Rs.51425/-. He was injured in a road accident which occurred on 26.9.2002. The other appeal was filed by Dharam Chand, owner and insured of the offending vehicle as the Insurance Company had been exonerated and liability was fastened on him.

2. In the appeal filed by Dharam Chand, counsel for the appellant argued that the Tribunal erroneously came to the conclusion that the injured was a gratuitous passenger travelling in the jeep and that because the third party policy did not cover such liability, the Company could not be held liable. It was contended that the insurance policy showed that it was a comprehensive one and also there was nothing to prove on record that Mange Ram was a passenger for hire or reward. Since the policy was comprehensive, it covered all kinds of risk and the Insurance Company was liable.

3. Learned counsel for the Insurance Company, however, argued that it was proved from the statement of Mange Ram himself that he was a gratuitous passenger because in his cross examination he stated that he had not disclosed the name of the driver of the jeep in his statement before the police and further he said that he neither knew the name of the driver nor he was known to him in any way. The argument is far-fetched because nothing can be deduced from the cross examination of Mange Ram that he had paid anything to the driver for travelling in the jeep. Simply because he did not know the driver or his name, it would not mean that he was a gratuitous passenger. Even a relative of the owner of the vehicle or a friend or known person may not know the name of the driver and that would not be taken to mean that the person was sitting in the vehicle for hire or reward.

4. Learned counsel for the appellant placed reliance on the judgment titled Amrit Lal Sood and another Vs. Kaushalya Devi Thapar and others 1998 ACJ 531 where it was held that Insurance Company was liable to pay even if the person was a gratuitous passenger. The Company had agreed to indemnify the insured against death or bodily injured to any person.

5. Learned counsel for the Insurance Company argued that even if the policy was comprehensive, that would mean the risk cover was for accident and damage to the vehicle. If separate premium was not paid for the passengers, the nature of the policy being comprehensive would not be sufficient to make the Company liable.

6. The view propounded by counsel for the Insurance Company is not acceptable because comprehensive policy would include all and the Tribunal wrongly held that it was a third party policy which did not cover gratuitous passenger. Here it is not even proved that Mange Ram was a passenger in that capacity. It is not understandable as to how the Tribunal concluded that the policy was a third party policy. The Insurance Company, therefore, cannot escape from the liability.

7. The appeal filed by Dharam Chand is, therefore, allowed holding that the amount awarded in favour of Mange Ram would be paid by the Insurance Company.

8. Regarding the other appeal, in which Mange Ram sought enhancement of the compensation, counsel for the appellant argued that the injury was in the backbone and the appellant remained admitted in PGIMS Rohtak for one month. There was 25% disability. The appellant spent about Rs.30,000/- at that time. Nothing was given to him for loss of income, special diet and attendant. As per the award, the amount of Rs.50,000/- was given for pain and suffering, which was more than adequate as per the value of money at the time of accident. The remaining amount was for the treatment as only the bills which were brought in evidence could be considered by the Tribunal.

9. The Tribunal correctly awarded the amount for medical expenses and pain and suffering. The amount of Rs.50,000/- awarded in relation to the accident happening in 2002, cannot be said to be inadequate for the disability due to which pain and suffering resulted. Regarding disability, special diet and attendant charges, the appellant is entitled to get some amount because he remained admitted in the hospital and also with injury in his back he must have been immobile for some period. An amount of Rs.50,000/- is awarded on that count, by which sum the compensation shall stand enhanced. The enhanced amount shall bear interest at the rate of 6% per annum from the date of petition till realization.

10. The appeal filed by Mange Ram is allowed in the said terms.

(NAVITA SINGH)
JUDGE

09.01.2015
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Whether to be referred to reporter: Yes