IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5837 of 2009 (O&M)
Date of decision 06.05. 2015.

ICICI Lambard General Insurance Company Limited

...... Appellant.

versus

Suresh and others

...... Respondents.

FAO No. 5838 of 2009

ICICI Lambard General Insurance Company Limited

...... Appellant.

versus

Smt. Bidamo and others

...... Respondents.

FAO No. 5839 of 2009

ICICI Lambard General Insurance Company Limited

...... Appellant.

versus

Smt. Meena and others

...... Respondents.

FAO No. 5840 of 2009

ICICI Lambard General Insurance Company Limited

...... Appellant.

versus

Smt. Darshna Devi and others

...... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Shri R.M. Suri, Advocate for the appellant(s) in all appeals.
Shri Ranvir Singh Chauhan, Advocate for driver and owner in all appeals..
Shri Gulshan Mehta, Advocate for respondents-claimants, in all appeals.

K.C.PURI, J.

By this common judgment, I intend to dispose of four appeals i.e FAO No. 5837 of 2009 titled as ICICI Lambard General Insurance Company Limited versus Suresh and others ; FAO No. 5838 of 2009 titled as ICICI Lambard General Insurance Company Limited versus Smt. Bidamo and others ; FAO No. 5839 of 2009 titled as ICICI Lambard General Insurance Company Limited versus Smt. Meena and others and FAO No. 5840 of 2009 titled as ICICI Lambard General Insurance Company Limited versus Smt. Darshna Devi and others. For convenience facts are being taken from FAO No. 5837 of 2009 titled as ICICI Lambard General Insurance Company Limited versus Suresh and others.

The aforesaid appeals are directed by Insurance Company against the Award dated 20.04.1999 passed by Mrs. Bimlesh Tanwar, Motor Accident Claims Tribunal, Hisar vide which claim petition was partly accepted and a sum of Rs.32,500/- was granted to the claimant along with interest @ 9% per annum from the date of filing of claim petition till realization.

2. Briefly stated four claim petitions No.123, 124, 125 and 25 were directed by Smt. Darshna Devi, Suresh, Meena etc. and Bidamo, claiming compensation on account of Motor Vehicles Accident. The common case put forward by the claimants is that on 17.06.2007 Balwinder, Satyawan, Surender, Zile Singh and Sadhu, after attending one marriage at village Kherampur were coming back to their village in a Tata Canter bearing registration No.HR68-2198, which was being loaded with dowry articles. One Telu Ram was also coming back in a Tata Sumo, after attending the marriage. The said Tata bearing registration No.HR68-2198 was being driven by respondent no.1 Balwan, at a high speed, rashly and negligently and at about 6.00pm, said Tata Sumo struck against a Roz in the area of BSF Camp, Hisar and over turned. Due to this impact, Balwan Singh respondent no.1, Suresh, Rohtash, Sadhu Ram, Zile Singh sustained multiple grievous injuries and Satyawan and Surender died at the spot due to injuries received in the said accident. The said accident was witnessed by Telu Ram. The police in collusion with the respondents did not register the case up to 27.06.2007 and when the matter was reported to higher police officers, then the FIR was registered. The accident took place due to rash and negligent driving by respondent No.1. Claimants claimed compensation

from the respondents by filing separate claim petitions.

3. Respondents No.1 and 2 driver and owner filed joint written statement whereas respondent No.3 filed separate written statement. Respondent Nos.1 and 2 denied the allegations made in the claim petition. It is pleaded by them that respondent No.1 was not at fault. The accident took place as a Roz suddenly came in front of the Tata Sumo which was being driven by respondent No.1. Moreover, the Tata Sumo bearing registration No. HR68-2198 was insured with respondent No.3 at the time of accident.

4. Respondent No.3 filed a separate written statement pleading that the respondent No.1 was not having valid and effective driving licence at the time of accident and no such accident took place with vehicle bearing registration No. HR68-2198 and a false case has been filed only to grab false compensation. The answering respondent is not liable to make payment of compensation. In the end, prayer for dismissal of claim petitions have been made.

4. From the pleadings of the parties, following issues and consolidated issues were framed :-

(1) Whether petitioners Darshana, Suresh, Meena and Bidamo received injuries in the accident which took place on 17.06.2007 in the area of Hisar-Sirsa Road near BSF Camp, Hisar due to rash and negligent driving of Canter bearing registration No. HR68-2198 by respondent no.1 Balwan ?OPA

(2) If issue No.1 is proved, whether the petitioners are entitled to claim compensation, if so to what amount and from whom ?OPP

(3) Whether the driver of the offending vehicle was not

holding a valid and effective driving licence and the vehicle was being driven in violation of terms and conditions of insurance policy ? OPR

(4) Relief.

5. The Tribunal has treated the claim petition under Section 163-A of the Act and returned finding against insurance company and held responsible all the respondents No.1 to 3 including Insurance Company jointly and severally liable to pay the amount of Rs.32,500/- along with interest @ 9% per annum from the date of petition till realization. Similarly, other three claim petitions were partly accepted.

6. Feeling dissatisfied with the aforesaid award, the Insurance Company has directed the present four appeals.

7. The only point raised by the counsel for the appellant is in respect of the liability of Insurance Company to pay the amount. It is hotly contended by the counsel for the appellant that since the injured and person, who died were travelling in a vehicle meant for transporting goods and as such the Insurance Company is not liable to indemnify the owner. It is submitted that injured and deceased were travelling in a goods vehicle and as such the Tribunal should not have passed the award against the appellant and in the alternative recovery rights should have been given to the Insurance Company. In support of his contention learned counsel for the appellant has relied upon the authority **National Insurance Company vs. Rattani and others reported in (2009)-2) PLR page 517** and **Ramesh Kumar vs. National Insurance Company Ltd. Reported in 2001 (4) R.C.R. (Civil) page 680.**

8. So far as authority **National Insurance Company vs. Rattani and others' case (supra)** is concerned the facts of that case are distinguishable. In that case member of the marriage party were travelling in a truck as a gratuitous passengers and under those circumstances, it was held that insurance company is not liable. However, in the present case, it is proved on the file that dowry articles were being transported as goods in the offending vehicle by injured and deceased persons. So, the case of the present claimants is duly covered by authority **Ramesh Kumar's case (supra).** The ratio of the said judgments is that after amendment in sub-clause I of Section 147(1)(b) of New Act, Insurance Company is liable in case owner and his representatives are travelling in goods vehicle alongwith the goods. Since the claimants were travelling in goods vehicle to carry out the dowry articles as representative of the owner and as such learned Tribunal has rightly held that the Insurance Company is liable.

9. In view of the above discussion all the four appeals are without any merit and the same stand dismissed.

10. A copy of this judgment be sent to the Tribunal for strict compliance.

(K.C.PURI)
JUDGE

May 06, 2015
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