IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.1911 of 2014 (O&M)

Gurbax Singh and another

...Appellants

Versus

Kuldeep Singh and another

...Respondents

(2) FAO No.2220 of 2014 (O&M)

New India Assurance Company Ltd.

...Appellant

Versus

Kuldeep Singh and others

...Respondents

Date of Decision: July 09, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Pandher, Advocate
for the appellants (in FAO No.1911 of 2014) and
for respondents No.2 and 3 (in FAO No.2220 of 2014).

Mr.Vinod Gupta, Advocate
for the appellant (in FAO No.2220 of 2014) and
for respondent No.2 (in FAO No.1911 of 2014).

Service of respondents No.1 already dispensed with
(in FAO No.1911 of 2014).

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INDERJIT SINGH, J.

Both the above-mentioned FAOs are taken up together for disposal being arisen from same Award.

FAO No.1911 of 2014 has been filed by Gurbax Singh, driver and Narinder Singh, owner of motorcycle bearing No.PB-09J-8726 (offending vehicle) against Kuldeep Singh, claimant and New India Assurance Company Limited challenging the impugned Award dated 15.01.2014 passed by learned Motor Accident Claims Tribunal, Kapurthala (hereinafter referred to as 'Tribunal') for setting aside the recovery rights.

FAO No.2220 of 2014 has been filed by the New India Assurance Company Ltd. against Kuldeep Singh, driver and Narinder Singh, owner of offending vehicle, challenging the above-said impugned Award claiming that Insurance Company is not liable to pay any compensation.

The brief facts of the case are that Kuldeep Singh claimant-injured filed claim petition against Gurbax Singh, driver, Narinder Singh, owner and New India Assurance Company Limited, Insurer of the offending vehicle, under Section 166 of the Motor Vehicles Act, 1988, on account of injuries received by him in a motor vehicular accident occurred on 22.03.2010. It is the case of the claimant that Gurbax Singh, driver asked the claimant to accompany him to Kapurthala on his motorcycle bearing registration No.PB-09J-8726, for personal work. Gurbax Singh was driving the offending vehicle whereas claimant was sitting pillion on it. Gurbax Singh was driving the offending vehicle at a high speed in a rash and negligent manner and when they reached near village Karar Kalan at 7.00 P.M., he took the motorcycle on wrong side and struck the same against some vehicle which was coming from opposite side, due to which the claimant and Gurbax Singh fell down. It is further stated that leg of the claimant was completely damaged and fractured. Gurbax Singh and those unknown persons ran away with their respective vehicles. Claimant was referred to DMC, Ludhiana, where he remained admitted till 11.05.2010. FIR was also got registered.

Upon notice, respondents driver and owner denied the accident and it was also denied that claimant was earning ₹20,000/- per month. Respondent No.3 Insurance Company took the plea that driver of the offending vehicle was not having a valid and effective driving licence. The accident, if any, took place due to contributory negligence. It is further pleaded that respondents-driver and owner have violated the terms and conditions of the Insurance Policy. The involvement of the offending vehicle in the accident is also denied.

The Tribunal after framing the issues, gave opportunity to the parties to lead evidence. On the basis of evidence produced on the record, the Tribunal awarded a sum of ₹8,83,540/- along with interest at the rate of 9% per annum. It is also held that in case the claimant succeeds to recover the entire amount of Award from respondent-Insurance Company alone, then in that eventuality, respondent-Insurance Company will be entitled to recover the same from respondents-driver and owner since it is proved on record that respondent-driver was not holding any valid and effective licence at the time of accident.

Aggrieved from the above-said Award, driver and owner have filed appeal i.e. FAO No.1911 of 2014. On the other hand, Insurance Company has also filed appeal i.e. FAO No.2220 of 2014, claiming that Insurance Company is not liable at all as the claimant was pillion rider and the policy was only act policy and not a package policy and pillion rider cannot be held as a third party.

At the time of arguments, learned counsel for the appellants Gurbax Singh and Narinder Singh argued that findings that Gurbax Singh was not holding valid driving licence at the time of accident, are wrong and recovery rights should not have been given to the Insurance Company. Learned counsel for the Insurance Company contested the appeal filed by the driver and owner.

I have heard learned counsel for the appellants driver and owner as well as learned counsel for the Insurance Company and have gone through the record.

As per the evidence on record and as admitted, the driver of the motorcycle i.e. Gurbax Singh was driving the motorcycle but he was having driving licence to drive scooter, car and tractor only. The mechanism of scooter and mechanism of motorcycle are the same, therefore, in no way, it can be held that Gurbax Singh, driver of the offending vehicle was not having a valid and effective driving licence. The findings of the Tribunal on this issue, are wrong and set aside by holding that Gurbax Singh was having a valid and effective driving licence at the time of accident.

As regarding the second appeal filed by the Insurance Company, I find that the claimant was pillion rider on the offending vehicle and the Insurance Policy was only act policy and not package policy. No premium was paid to insure the pillion rider. In these appeals, it is admitted fact that it was only an act policy. Learned counsel for the Insurance Company has also shown the original Insurance Policy by stating that it has covered only loss to the third party.

Only dispute in this appeal was whether pillion rider is third party in the act policy or he cannot be held as third party. On this issue, learned counsel for the appellant-Insurance Company has cited judgment passed by the Hon'ble Supreme Court in ***United India Insurance Co. Ltd., Shimla vs. Tilak Singh and others, AIR 2006 SC 1576***, wherein it has been held as under:-

> *"21. In our view, although the observation made in Asha Rani's case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-insurance company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger."*

I have gone through the above-cited judgment and the same fully applies in the present case. No judgment has been cited by learned counsel for appellants driver and owner in rebuttal of above-cited judgment.

Therefore, as the claimant was pillion rider on the offending vehicle, therefore, he will be treated as gratuitous passenger. The Insurance Policy was not a package policy, therefore, the Insurance Company is not liable to pay compensation in the case of injury suffered by pillion rider as held by the Hon'ble Supreme Court as discussed above. Therefore, the appeal filed by the Insurance Company is allowed. The Insurance Company is held not liable to pay any compensation amount to the claimant.

Resultantly, FAO No.2220 of 2014 stands allowed and FAO No.1911 of 2014 stands dismissed with the modification of the finding that Gurbax Singh, driver was having valid and effective driving licence at the time of accident.

July 09, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**