IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1903 of 1993
Date of Decision-21.10.2016

National Insurance Company Ltd. ... Appellant

Versus

Abhey Ram etc. ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.C. Kapoor, Advocate for the appellant.

Mr. Virender Soni, Advocate for respondents No.2 & 3.

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RAJ MOHAN SINGH, J.

[1]. National Insurance Company has filed this appeal against the award dated 21.08.1993 passed by Motor Accident Claims Tribunal, Hisar whereby liability was fastened upon driver of the offending vehicle, owner of the offending vehicle and Insurance Company of the offending vehicle. Award of Rs.1,00,800/- was passed in favour of claimants along with interest @ 12% per annum from the date of filing of claim petition till final realization of the amount. The liability was joint and several of the respondents.

[2]. The grievance of the appellant-Insurance Company is only to the extent that since no stay was granted while admitting the appeal, therefore, Insurance Company has already made good the payment in favour of claimants, but appellant is entitled to recover the amount from the driver and owner of the offending vehicle.

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[3]. Learned counsel for the appellant contended that the view taken in ***New India Assurance Company Ltd. Vs Satpal Singh, 2000 ACJ 1 (SC)*** was reversed by the Apex Court in ***New India Assurance Company Ltd. Vs. Asha Rani, 2003 ACJ 1 (SC)***. Learned counsel submitted that in ***New India Assurance Company Ltd. Vs. Vedwati and others, 2007 ACJ 1043 (SC)*** and ***Ajit an another Vs. Krishna Devi and another, 2013 ACJ 1773 (P&H) (HC)***, it was held that in case of goods vehicle, Insurance Company is not liable in respect of risk of the passenger. The owner of the goods vehicle was under obligation to get his vehicle insured for covering risk of any passenger travelling in goods vehicle. The gratuitous passenger travelling in the goods vehicle in violation of the policy cannot fasten liability on the Insurance Company in the event of getting himself injured on account of accident of the vehicle in which he was travelling. Gratuitous passenger if not authorized representative of the owner of the goods would not involve the Insurance Company for any liability to pay compensation. Insurance Company does not insure gratuitous passenger, only an exception is that if the authorized representative of the owner himself is travelling along with the goods then Insurance Company is liable.

[4]. On the basis of ratio as laid down hereinabove, it can be safely held that Raj Kumar deceased who took lift in the four wheeler bearing No.HR-21-2297 was a gratuitous passenger. The vehicle met with an accident with tractor bearing No.HNH-5103

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which was parked on the left side of the road. The tractor-trolley was loaded with wooden poles (ballies). The driver of the Matador/four wheeler was allegedly driving the vehicle in a rash and negligent manner. Many persons were travelling in the said Matador. In the process of overtaking the said tractor-trolley, wooden poles loaded in the trolley had struck against the person of Raj Kumar who was travelling in the Matador. Raj Kumar sustained grievious/fatal injuries and died at the spot. He was declared brought dead in the hospital.

[5]. Evidently, Raj Kumar was a gratuitous passenger. The vehicle was not insured for the risk of private person like Raj Kumar, nor Raj Kumar was owner of the Matador. The vehicle was a goods vehicle, therefore, ratio laid down in the aforesaid judgments duly covers the proposition. There is no evidence on record to show that extra premium of insurance was also paid for any private person covering the risk to that extent. Authorized person by the owner of the vehicle stands completely on a different footing to a person who was given permission to board a vehicle either as gratuitous passenger or as a commuter, who were qualified for being compulsorily required to be covered under Section 147 of the Motor Vehicles Act by dint of amendment of Act No.54 of 1994.

[6]. In order dated 09.03.2015, it was noticed that respondent No.7 i.e. owner of Matador/four wheeler refused to

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accept the service. Vide order dated 11.08.2015, respondent No.7 was proceeded against ex parte. Respondent No.6 driver of the Matador/four wheeler was duly represented by the counsel, but none appeared on his behalf.

[7]. Since the appellant has already satisfied the award passed by the Tribunal, therefore, Insurance Company shall have recovery right to recover the amount so paid by it from the owner and driver of the offending vehicle in accordance with law. Consequently, appeal is allowed in the aforesaid manner.

(RAJ MOHAN SINGH)
JUDGE

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Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**

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