IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.247 of 2009 (O&M)
Date of decision: 23.02.2016

United India Insurance Company Limited ….Appellant

Versus

Sarabjit Kaur and others ….Respondents

2) FAO No.248 of 2009 (O&M)

United India Insurance Company Limited ….Appellant

Versus

Karamjit Kaur and others ….Respondents

3) FAO No.4592 of 2008 (O&M)

Kiran Devi and others ….Appellants

Versus

Gurwinder Singh and others ….Respondents

4) FAO No.4593 of 2008 (O&M)

Sarabjit Kaur and others ….Appellants

Versus

Gurwinder Singh and others ….Respondents

5) FAO No.4594 of 2008 (O&M)

Karamjit Kaur and others ….Appellants

Versus

Gurwinder Singh and others ….Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashok Jindal, Advocate
for the appellants
in FAO Nos.4592, 4593, 4594 of 2008.

Mr. Vikas Mohan Gupta, Advocate
for the appellants
in FAO Nos.247-248 of 2009.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate
for respondent No.4-United India Insurance Company
in FAO Nos.4592, 4593, 4594 of 2008.

Mr. S. S. Sidhu, Advocate,
Mr. Pardeep Goyal, Advocate and
Mr. Abhishek Goyal, Advocate
for the respondent-Oriental Insurance Comp. Ltd.

JITENDRA CHAUHAN J. (Oral)

CM No.885-CII of 2009 in FAO No.247 of 2009

and

CM No.887-CII of 2009 in FAO No.248 of 2009

Keeping in view the grounds mentioned in the applications, the same are allowed and the delay of 4 days in filing the appeals stands condoned.

MAIN APPEALS

1. By this single judgment, this Court intends to dispose of the aforesaid five appeals having arisen out of the same impugned award dated 01.10.2008.

2. The appellants in FAO Nos.247 and 248 of 2009 have assailed the amount of compensation award dated 01.10.2008 passed by the learned Motor Accidents Claims Tribunal, Bathinda, (for short, 'the Tribunal'), whereby the claimants were awarded Rs.4,08,000/- and Rs.3,84,000/-, respectively.

3. The appeals i.e.FAO Nos.4592, 4593 and 4594 of 2008 have been filed by the claimants-appellants against the aforesaid award passed by the learned Tribunal, whereby the claimants were awarded Rs.3,60,000/-, Rs.4,08,000/- and Rs.3,84,000/-, respectively.

4. The learned counsel for the appellant-United India Insurance Company Limited states that the learned Tribunal has rightly assessed the compensation as per Schedule II, therefore, no enhancement is required to be made in the award. He further states that as per the terms and conditions of the policy, the claimants were entitled only to a sum of Rs.82,500/-. The learned Consumer Forum has already awarded a sum of Rs.82,500/- on account of death of Sukha Singh and Ganesh Chand.

5. Whereas, the learned counsel for the respondent-Oriental Insurance Comp. Ltd. states that the learned Tribunal has rightly held that being the owner and insurer of vehicle No.PB-03F-2162, respondent-Hari Kishan and United India Insurance Co. Ltd. are liable to pay 50% of the awarded amount and 50% liability was fixed on respondent-Gurwinder Singh, owner of Milk Tanker No.PB-05L-5662, as he did not produce the insurance policy. He further states that deceased Ganesh Chand, was a gratuitous passenger in the canter No.PB-03F-2162, which was insured with United India Insurance Company Ltd., thus he was not held liable to pay the compensation for violation of the terms

and conditions of the policy.

6. The learned counsel for the appellants-claimants submits that the learned Tribunal has committed an illegality in absolving the liability of both the Insurance Companies. He further contends that the learned Tribunal has erroneously allowed the deduction of the amount granted by the District Forum from the compensation awarded to the claimants of Sukha Singh and Ganesh Chand, however the same was awarded because the insurance company has charged extra amount for personal accident of two persons. Therefore, the appellants are entitled to this amount separately and the same cannot be deducted from the award passed by the learned Tribunal. Hence, the award passed by the learned Tribunal should be modified and both the insurance companies should also be held liable to pay the compensation amount.

6. I have heard learned counsel for the parties and perused the case file.

7. The learned Tribunal has held that respondent-Gurwinder Singh, owner of the Milk Tanker, did not supply the copy of the insurance policy despite the order dated 22.09.2007, therefore, the Oriental Insurance Co. Ltd. is discharged from the liability. Further, the liability of the United India Insurance Co. Ltd. is also discharged as the deceased Ganesh Chand was

travelling in goods vehicle, being a gratuitous passenger, for which there is no statutory liability of owner under the Act to insure the vehicle. As the claimants have already received a sum of Rs.83,000/- vide order dated 19.12.2007 passed by District Consumer Forum, Bathinda for the said accident, therefore, the amount of compensation be given to the claimants after deducting that amount. In the case of claimants-Sarabjit Kaur & Karamjit Kaur, the liability lies upon United India Insurance Co. Ltd. as the owner of Tata canter having a valid registration certificate (Ex.RA), owner of Milk Tanker as he has failed to produce the copy of insurance policy and owner of Tata canter. Thus, this Court feels that the learned Tribunal has rightly passed the impugned award.

8. Accordingly, the present appeals are dismissed, however, the liability to pay the amount of compensation shall remain same as decided by the learned Tribunal.

(JITENDRA CHAUHAN)
JUDGE

23.02.2016
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