IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3949 of 2009 (O&M)
Date of Decision: 27.08.2016

Surinder Kaur ...Appellant

Vs.

Smt. Rano Devi and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. Sarju Puri, Advocate
for the appellant.

Mr. T.P. Singh, Advocate
for respondents No.1 to 3.

Mr. Ravinder Arora, Advocate
for respondent No.7.

Amol Rattan Singh, J (Oral)

Civil Misc. No.18310-CII of 2009

For the reasons stated in the application, it is allowed and the delay of 42 days in filing the appeal is condoned.

FAO No.3949 of 2009

1. Learned counsel for the appellant submits that the two issues in this appeal are firstly, as to whether the negligence of the driver of the said vehicle, i.e. now deceased Gurmail Singh, was duly proved or not.

Second, as to whether the appellant, who is the owner of the vehicle, can be held liable to pay compensation, with the vehicle having been

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duly insured with respondent No. 7 herein, i.e. the National Insurance Company Ltd.

The appeal has been filed by the owner of the vehicle which was involved in an accident, leading to the filing of the claim petition in which respondents No. 1 to 3 herein have been awarded a compensation of Rs. 9,15,000/-, along with interest thereupon.

2. As regards the issue of negligence, Mr. Puri, learned counsel for the appellant, submitted that it was contended that the deceased (Raj Balwinder) was travelling in a Maruti Zen car bearing registration No. PB-07-M-5277, driven by the late Gurmail Singh on 03.10.2004. One Manjit Singh and another, Jaswinder Singh, were also travelling in the vehicle.

They were travelling from Chandigarh to Nawanshahr, and when the car reached near the octroi post at Bains Mandi, Kharar, a stray cow suddenly came on to the road and trying to avoid the cow, Gurmail Singh lost control over the vehicle and hit the car against an electric pole, due to which the deceased sustained multiple injuries and died on the spot.

3. The deceased was stated to be 43 years old, in Government service, drawing a salary of Rs. 16,515/- per month. However, since the quantum of compensation is not under challenge, and that issue has not been pressed upon by either counsel for the appellant or for the respondent-insurance company, with it having been assessed as per settled law, it is not being gone into.

4. Upon notice issued to the respondents, respondent No. 1 initially appeared through his counsel but having unfortunately died

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thereafter, subsequently his legal representatives were brought on record by the Tribunal, who also put in appearance through counsel. However, no written statement is shown to have been filed on their behalf, in the Award.

5. The present appellant, i.e. respondent No. 2 before the Tribunal, filed a written statement denying all the averments made in the claim petition, including the factum of the accident.

6. The insurance company, i.e. respondent No. 3 before the Tribunal, filed a separate reply, also denying the averments made in the claim petition and further raising the usual preliminary objections with regard to its non-liability for various reasons, including the fact that the deceased was travelling as a gratuitous passenger and as such, the insurance company was not bound to indemnify the insured (present appellant) for his death, even if his death occurred on account of the accident with the car insured by the company.

7. Upon the aforesaid pleadings, the following issues were framed by the Tribunal:-

> "*(1) Whether respondent No. 1 while driving Maruti Zen car No. PB-07-M-5277, at about 11:00 p.m. on 03.10.2004 in Bains Mandi, Kharar, so rashly and negligently caused an accident as result of which Raj Balwinder Singh died? OPP.*
>
> *(2) If issue No. 1 proved to what amount of compensation, claimants are entitled to and from whom? OPP.*
>
> *(3) Whether respondent No. 1 was not holding a valid and legal driving license? OPR.*
>
> *(4) Whether the offending car was being used*

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in contravention of the Motor Vehicles Act, 1988? OPR

(5) Relief.

8. As regards the issue of negligence, the testimony of PW-2 Balbir Singh, made in terms of the claim petition, was fully believed by the learned Tribunal, including the fact that the car had been driven rashly and negligently by its driver, who could not immediately stop the vehicle upon noticing the stray cow and thereafter, while avoiding the car, struck against the electric pole.

It was specifically noticed by the Tribunal that it was nobodys' case that it was extremely dark and therefore, the stray cow was not visible, or that it had come onto the road from some blind corner.

Hence, with no rebuttal to the testimony of the aforesaid witness, it could not be held that the accident was "an Act of God" as it was obvious that the driver had lost control over the vehicle and could not stop it on time within a safe distance, meaning thereby that he was driving at a high speed.

9. To hold that it was not "an Act of God", the learned Tribunal cited various judgments, including one of the Hon'ble Supreme Court in **Pushpabai Parshottam Udeshi and others** vs. **Ranjit Ginning & Pressing Co. Pvt. Ltd. and another** AIR 1977 SC 1735, wherein it was held as follows:-

> "*We are unable to accept the plea for in a country road with a width of about 15 feet with fields on either side, ordinary care is required that car should be driven at a speed in which it could be controlled if some stray*

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cattle happened to come into the road..... .

The car could not have gone to right extremely and dashed with such violence on the tree, if the driver had exercised reasonable care and caution."

10. Though learned counsel for the insurance company has tried to support counsel for the appellant on this aspect, I am not inclined to interfere with the finding of the Tribunal to the effect that it was actually the late Gurmail Singh who was obviously driving the car at such a speed that he could not control it or bring it to a halt after seeing the cow appearing on the road.

11. It must be said here that the road on which the car was travelling, being a highway, the authorities responsible for ensuring road safety, are required to erect safety barriers along with the sides of road, so as to ensure that stray cattle and animals do not come onto the highway. As such they need to be foisted with liability of negligence, for not ensuring safety measures. However, the said authorities not having been impleaded as respondents either before the Tribunal or before this Court, and in fact neither the appellant nor the insurance company having even raised any such issue at all, nothing further is said in this particular case on that issue.

12. Despite the above, as already said, the late driver of the vehicle in question cannot be absolved of responsibility for not observing proper precautions while driving on a highway, obviously at a speed which ensured that he lost control over the vehicle, on an animal coming on to the highway.

Therefore, the contention of learned counsel for the appellant (as also the insurance company), on the issue of negligence, is rejected.

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13. As regards the issue of liability of the respondent-insurance company to pay the compensation, instead of the appellant-owner of the car, learned counsel for the appellant reiterates that the hon'ble Supreme Court in the case of **Amrit Lal Sood and another Vs. Kaushalya Devi Thapar and others**, (1998) 3 Supreme Court Cases 744, has empathetically held that even if a passenger travelling in a private car is a gratuitous passenger, he would be covered within the meaning of the term “third party policy”, if the insurance policy is a “package policy”.

He further submits that the ratio of the judgment in **Amrit Lal Soods'** case (supra), though without reference to that case, was again reiterated in **Rani Gupta and others Vs. M/s United India Insurance Co. Ltd. and others**, AIR 2009 (SC) 3226.

14. A perusal of the evidence led before the Tribunal shows that the policy in question (Ex.R-1) which was valid from the midnight of 07.08.2004 to the midnight of 06.08.2005, was indeed a package policy (for a private vehicle) issued on 06.08.2004 and as learned counsel for the respondent-insurance company has not been able to distinguish the aforesaid judgments, consequently, the policy in question being a package policy for a private car, this appeal has to be allowed as per the ratio of the aforesaid judgments and accordingly is allowed.

It is held that the compensation of Rs.9,15,000/- awarded by the learned Motor Accident Claims Tribunal, Nawanshahr, vide the impugned Award dated 29.10.2008, along with interest @ 7.5% per annum, running from the date of the filing of the claim petition till the date of its realization,

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would be payable entirely by respondent No.7 herein, i.e. the National Insurance Company Limited, which had insured the vehicle in question (Maruti Zen Car bearing registration No.PB07-M-5277).

No orders as to costs.

August 27, 2016 **(AMOL RATTAN SINGH)**
vcgarg/nitin **JUDGE**

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