IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3688 of 2010 (O&M)
Date of decision : 17.05.2016

Oriental Insurance Company Ltd.

......Appellant

Versus

Smt. Suman and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. *Whether Reporters of the local papers 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: Mr. Suvir Dewan, Advocate for appellant.
Mr. J.P. Sharma, Advocate for respondents No.1 & 2.
Respondents No.3 & 4 proceeded against *ex parte*.

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DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-Oriental Insurance Company Ltd. (respondent No.3 in the claim petition) against the award dated 02.04.2010, passed by the learned Motor Accidents Claims Tribunal, Narnaul (hereinafter called the 'Tribunal'), vide which respondents No.1 & 2-claimants have been awarded compensation to the tune of Rs.4,18,000/- on account of death of Mohar Singh in the motor vehicular accident which took place on 04.12.2008.

2. Learned counsel for the appellant-Insurance Company

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contended that respondent No.3, the driver of the tempo, was having the driving licence for LMV non-transport vehicle, but he was driving the tempo in question which is a commercial/transport vehicle. He was required to possess the driving licence to drive the transport vehicle. Thus, he contended that as respondent No.3 was not authorised to drive the transport vehicle, so the insured has committed the violation of the terms and conditions of the insurance policy by handing over the vehicle to respondent No.3 who was not having the driving licence for the transport vehicle. Thus, he contended that the appellant-Insurance Company cannot be made liable for payment of the amount of compensation.

3. Learned counsel for respondents No.1 & 2 contended that the Court may pass the appropriate order in accordance of law.

4. I have duly considered the aforesaid contentions.

5. Before proceeding further to discuss the contentions raised by learned counsel for the appellant on merits, it is pertinent to mention that respondents No.3 & 4 the driver and owner, respectively, of the vehicle concerned have not appeared despite service and were proceeded against *ex parte* by the Coordinate Bench vide order dated 13.03.2014.

6. The only issue raised by learned counsel for the appellant-Insurance Company is that respondent No.3 was driving the commercial/transport vehicle i.e. tempo bearing registration No.HR-12PA-0513, which was insured as the passenger carrying vehicle. Respondent No.3 was not having any licence to drive the transport vehicle. So, the Insurance Company is not liable.

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7. Ex.RW2/D is the copy of the driving licence of respondent No.3. He was authorised to drive the motorcycle with gear and LMV non-transport vehicle. His licence was issued by the Licensing Authority, Narnaul. Thus, it is evident that the driving licence of respondent No.3 was only for LMV non-transport vehicle, but he was driving the passenger carrying three-wheeler. The copy of the insurance policy Ex.R4 shows that the tempo in question was insured as a passenger carrying three-wheeler. So, the vehicle in question was insured as a commercial/transport vehicle.

8. As per Section 3 of the Motor Vehicles Act, 1988 (for short the 'Act') a specific authorisation is required to drive the transport vehicle. The approach of the learned Tribunal was erroneous, as he has considered the tempo in question to be the non-transport vehicle simply on the ground that in the registration certificate, the said vehicle has been registered as a light motor vehicle. Light motor vehicle is the classification of the vehicle. Even a transport vehicle can be the light motor vehicle. The registration certificate Ex.PX shows that the three-wheeler in question has been registered by the Registering Authority-cum-Secretary R.T.A., Rohtak. The Secretary R.T.A. deals only with the transport vehicles. As already mentioned the vehicle in question has already been insured as a passenger carrying vehicle, so certainly the vehicle in question was a transport vehicle.

9. Ex.RW2/D is the copy of driving licence of respondent No.3 Dharampal which is only for LMV-non transport. In case ***New India Assurance Company Ltd. Vs. Parbhu Lal 2008 (1) RCR (Civil) 198***, the driver was holding the licence to ply the light motor vehicle but he was

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driving the transport vehicle, which met with an accident. The Hon'ble Apex Court laid down that a person holding licence to ply the light motor vehicle cannot ply the transport vehicle. Similar ratio of law has been laid down by this Court in cases ***Bajaj Allianz General Insurance Co. Ltd. Vs. Flying Officer Vishnupriya Srinivasan 2013(2) PLR 26, Reliance General Insurance Co. Ltd. Vs. Maya Devi and others 2014(1) Law Herald 859*** and ***United India Insurance Co. Ltd. Vs. Sajjan Singh and another 2015(2) PLR 788***.

10. Thus, there was apparent violation of terms and conditions of the insurance policy by the insured and to fasten the liability on the Insurance Company without providing the recovery rights against the insured was not justified. As the vehicle in question was duly insured with the appellant-Insurance Company vide insurance policy Ex.R4, the claimants are the legal heirs of the victim of the accident, so appellant-Insurance Company should have been directed to pay the amount of compensation and then to recover the same from the insured.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The impugned award dated 02.04.2010 is hereby modified. It is made clear that the appellant-Insurance Company will firstly pay the amount of compensation to the claimants, if not already paid, and then to recover the same from the insured by executing this very award.

17.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

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