IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 436 of 2010 (O&M)
Date of Decision : 09.08.2016

Ronak Ram @ Ronki Ram ....Appellant

Versus

National Insurance Co. Ltd. and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Deepak K. Sharma, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent no. 1.

Surinder Gupta, J.

This is appeal by owner of Jeep bearing registration no. HR-20-F-9743 (later referred to as 'the offending vehicle') challenging award dated 13.04.2006 giving rights to respondent no. 1 i.e. National Insurance Company Ltd. to recover amount of compensation paid to claimants from the appellant.

2. On 13.11.2004, Man Singh (later referred to as 'the deceased') was returning to his village in the offending vehicle, which met with an accident resulting in his death. The Tribunal allowed compensation of ₹1 lac with interest which at the first instance was payable by insurer, who was allowed right to recover the same from owner of the offending vehicle.

3. Learned counsel for the appellant has argued that Tribunal observed that the offending vehicle was being used as taxi for carrying passengers, as such, owner of the offending vehicle has violated terms and conditions of the insurance policy. The above conclusion was drawn from one line in cross-examination of PW-2 Khushi Ram, who has stated that in case driver on reaching the destination had asked for fare, they would have

Jitender Kumar
2016.08.20 14:48
I attest to the accuracy and
integrity of this document

paid the same. From the above statement, conclusion cannot be drawn that the vehicle was being plied by owner as taxi. Had it been so, driver of the vehicle would not have taken any passenger without fare and would not have left the passenger in any doubt about payment of the fare. Even otherwise, it was not the case of insurer in pleading that the offending vehicle was being plied as taxi. In the absence of specific pleading the insurance company cannot escape its liability to indemnify the insured. He has relied on the observation of a coordinate Bench of this Court in case ***National Insurance Co. Ltd. vs. Smt. Chand Chhabra and others, 2010 (4) PLR 427***

4. Learned counsel for respondent no. 1 has argued that driver was carrying 7-8 passengers in the offending vehicle, which shows that he was plying it as a taxi. PW-2 Khushi Ram, the witness examined by claimants, has stated that they would have paid the fare to driver on demand after reaching the destination, which leaves no doubt about use of the vehicle as taxi. The Tribunal has rightly held that owner of the offending vehicle committed breach of terms and conditions of the insurance policy, as such, the insurer is entitled to recover amount of compensation paid to claimants from the insured.

5. I have given a careful thought to submissions of learned counsel for parties and have perused the paper-book and record of the Tribunal with their assistance.

6. Admittedly, there is no pleading by the insurer that the offending vehicle was being used as taxi. Onus is on the insurance company to prove the defences available to it under Section 149 (2) (a) of the Motor Vehicles Act in order to avoid its liability to pay the

Jitender Kumar
2016.08.20 14:48
I attest to the accuracy and
integrity of this document

compensation. PW-2 Khushi Ram has stated in his cross-examination that there were 7-8 passengers travelling in the jeep. He has nowhere stated that they have hired or boarded the jeep as a taxi. He has, however, stated that **"if driver asked us for fare after reaching our destination then we would have to pay the same".** He is talking in general that if a driver asked for fare after dropping them at destination they would have paid the same. No suggestion was given to him that they have hired the vehicle as taxi or have borrowed the vehicle on promise to pay the fare or driver of the offending vehicle was using the same for carrying passengers from one place to other place for reward.

7. The Tribunal has committed grave error while reaching the conclusion that the offending vehicle was being plied as taxi on the basis of above quoted statement of PW-2 Khushi Ram.

8. In case of ***Smt. Chand Chhabra (supra)*** it was observed by a Bench of this Court that in the absence of specific pleading the insurer will not be able to deny indemnity to insured on the ground that there has been violation of terms and conditions of insurance policy.

9. As a sequel of my discussion above, this appeal has merit and the same is accepted to the extent that award passed by the Tribunal allowing right to recover amount of compensation paid to claimants by insurer from insured/appellant is set aside.

August 09, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable *Yes/No*

Jitender Kumar
2016.08.20 14:48
I attest to the accuracy and
integrity of this document