IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.219 of 2011 (O&M)
Date of Decision: January 11, 2016.

Babli Rani and others

..........APPELLANT(s).

VERSUS

Hari Kishan and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.K. Shukla, Advocate
for the appellant (s).

None for respondents No.1 and 2

Ms. Madhu Sharma, Advocate
for respondent No.3.

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SURINDER GUPTA, J.

This is appeal by appellants-claimants against the award dated 08.03.2010 passed by Motor Accident Claims Tribunal, Patiala (later referred to as the Tribunal) allowing compensation of ₹4,07,000/- for the death of Ashok Kumar (later referred to as the deceased), husband of claimant No.1-Babli Rani and father of claimants No.2 to 4 in a motor accident with Mahindra Max Pick-up bearing registration No.HP-24A-4524 Temporary No.CH-23-3849(T) (later referred to as the offending vehicle).

2. The Tribunal while awarding compensation, absolved the insurer of the offending vehicle from its liability to pay any compensation holding that the deceased was a gratuitous passenger and no liability of

insurance company to pay any compensation for the death of gratuitous passenger in a motor accident is attracted.

3. The case of the claimants, in brief, is that on 20.08.2005, the deceased along with Sandeep Kumar and Naveen was coming from Himachal Pradesh carrying his vegetables and fruits in the offending vehicle. The deceased had to alight at Ambala with his vegetables and fruits. Hari Kishan, respondent No.1 was driving the offending vehicle in a rash and negligent manner at a very high speed. Despite warning by occupants of the vehicle, he did not slow down the speed. At about 06.10 A.M. when they reached Lalru, the offending vehicle hit against a stationary truck near the office of Electricity Board, Lalru. As a result of the accident, the deceased received serious fatal injuries and died at the spot. Another occupant of the vehicle namely Naveen also died at the spot while two others received serious injuries. Bhupinder Sharma reported the matter to the police and an FIR No.107 dated 20.08.2005 was registered at Police Station Lalru regarding the accident.

4. The deceased was shifted to A.P.Jain Civil Hospital, Rajpura, where his post-mortem was conducted on 21.08.2005. The claimants have alleged that due to death of the only bread winner of the family, they have not only suffered irreparable loss but are left with no source of income. They have also been deprived of love and affection and company of the deceased.

5. Respondents No.1 and 2 i.e. driver and owner of the offending vehicle in their written statement denied the accident and all the other averments of the claimants. It was alleged that deceased was not travelling in the offending vehicle and no accident as alleged by the claimants ever

took place.

6. In separate written statement filed by insurance company, all the averments of the claimants were contested, controverted and denied, inter-alia pleading that from the averments of the claimant, it was a clear case of gratuitous passenger travelling in the offending vehicle which was a goods vehicle and not meant for carrying passengers.

7. Pleading of the parties led to the framing of issues as follows:-

(1) Whether Ashok Kumar died in a motor accident occurred out of the use of motor vehicle Mahindra Max Pick Up bearing Registration No.HP-24-A/4524 (Temporary No.CH-23-3849) which was being driven by its driver/respondent No.1 Hari Krishan on 20.8.2005 in the area of village Lalru, District Patiala? OPA

(2) Whether the claimant is entitled to compensation, if so to what amount and from whom?OPA

(3) Whether the driver of the offending vehicle i.e. respondent No.1 was not holding valid and effective driving licence at the time of alleged accident, if so its effect? OPR-3

(4) Whether the deceased was gratuitous passenger on a goods carrying commercial vehicle? If so its effect? OPR-3

(5) Relief.

8. The Tribunal while recording findings on issue No.1, concluded that the deceased has died in an accident, arising out of the use of offending vehicle. After assessing the compensation payable to the claimant as ₹4,07,000/-, the Tribunal observed that the deceased was travelling in the offending vehicle as gratuitous passenger. With the above observations, the insurance company was absolved of its liability to pay any compensation and the award was passed against respondents No.1 and 2.

9. Learned counsel for the appellants has not challenged the quantum of compensation as awarded by the Tribunal and has confined his

argument with regard to the liability of insurance company to pay the compensation, holding the deceased as gratuitous passenger on the offending vehicle. He has argued that deceased, a vegetable and fruit seller, was coming in the offending vehicle with his vegetables and fruits purchased from Himachal Pradesh. He had to alight at Ambala with his fruits and vegetables. The Tribunal has wrongly interpreted the statement of RW1 while reaching the conclusion that the deceased was travelling on the offending vehicle as gratuitous passenger. An owner, travelling in the goods vehicle, with his goods is not a gratuitous passenger. Even RW1, whose testimony has been relied upon by the Tribunal, has stated that the deceased was travelling in his vehicle along with his vegetables.

10. Learned counsel for the insurance company has argued that RW1 Rampal, owner of the offending vehicle has stated that the deceased was travelling in the offending vehicle as gratuitous passenger and the Tribunal has rightly concluded on the basis of statement of RW1 that being gratuitous passenger, no liability of the insurance company to pay the compensation is attracted.

11. The Tribunal while discussing the question of liability to pay the amount of compensation, observed in para 16 and 17 as follows:-

> "16. In so far as the question as to who is liable to pay the aforesaid amount of compensation is concerned, learned counsel for respondent No.3 has vehemently relied upon the deposition of R.W.1 Ram Pal, wherein the said witness has admitted the fact that the vehicle in question was a commercial vehicle and that the deceased had taken a lift in the said vehicle and thus being a gratuitous passenger the insurance (sic company) is not liable to pay the compensation on account of

> death of the deceased. A strong reliance has been placed on a case law reported as **2007 ACJ 2273 titled as New India Assurance Co. Ltd. Vs. Santra Devi and others.**
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> 17. I have considered the aforesaid submission of learned counsel for respondent No.3 and have also gone through the case law relied upon by him. Even according to the case of the claimant, it is not disputed that the offending vehicle was a commercial vehicle and that the deceased was travelling in the said vehicle. Although, the claimant claims that the deceased has hired the said vehicle alongwith other occupants, but there is nothing on record, which could substantiate the aforesaid plea of the claimant. On the other hand, the owner of the offending vehicle has himself stepped into the witness box as R.W.1 and from his deposition, it is clear that the deceased was travelling in the offending vehicle as gratuitous passenger. Thus, I am of the considered view that the case law relied upon by the learned counsel is fully applicable to the facts and circumstances of this case and that the insurance company is not liable to pay the compensation, as terms and conditions of the insurance policy Ex.R.4 has been violated. Accordingly, respondent No.1 being the driver of the offending vehicle and respondent No.2 being the owner of the offending vehicle both are jointly and severally reliable (sic liable) to pay the amount of compensation to the claimants."

12. On perusal of the statement of Ram Pal RW1, I find that Tribunal has committed grave error of law and fact while concluding on the basis of his testimony that deceased was travelling in the offending vehicle as gratuitous passenger and not along with his goods. Firstly, Ram Pal was not in the vehicle at the time of accident and the driver of the vehicle has not been examined. Secondly, even Ram Pal while appearing as RW1, has stated that the vehicle of the deceased had broken down on the way and he came to his driver and arranged the offending vehicle for transporting his vegetables.

On reaching the spot, he was told that Sandeep Kumar and Naveen hired his vehicle to carry vegetables to Haryana. He admitted that offending vehicle met with an accident in which Ashok Kumar (deceased) died. He had also received claim for the damage to his vehicle in the accident. His one line statement that Sandeep Kumar and Naveen along with Ashok Kumar took lift in his vehicle, cannot be segregated from his entire statement which shows that the deceased had hired his vehicle and was travelling in the offending vehicle alongwith his vegetables. Even in the FIR, this fact is mentioned that the offending vehicle was carrying vegetables and fruits at the time of accident.

13. Section 147 of Motor Vehicles Act, 1988 provides as follows:-

> *"147. Requirement of policies and limits of liability. – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -*
> *(a) is issued by a person who is an authorised insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –*
> *(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place ;*
> *(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.*
> *..........xxx.........xxx.......xxx..........xxx................"*

14. It is clear from the perusal of above Section that owner of the goods or his authorised representative carried in the vehicle is also covered under the statutory policy. Hon'ble Apex Court in the case of ***New India***

Assurance Company Vs. Shri Satpal Singh (2000-1) PLR 464; on analysis of Section 147 of Motor Vehicles Act has observed in para 11 as follows:-

> "11. The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

15. In view of the settled proposition of law and the facts and circumstances of the case as discussed above, it is apparent that the finding recorded by the Tribunal that the deceased was a gratuitous passenger on the offending vehicle thereby absolving the insurance company from its liability to pay compensation on this score, is illegal, against facts and perverse, consequently, is set aside. This appeal has merits and is allowed to the extent that the insurance company i.e. respondent No.3 is liable to indemnify the insured for his liability to pay the compensation as assessed by the Tribunal. Claimants shall also be entitled to costs of this appeal. Counsel fee is assessed as ₹20,000/-.

(SURINDER GUPTA)
JUDGE

January 11, 2016.
Sachin M.