781 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2521 of 2011
Date of decision: 17.02.2016

Roshan and another

...Appellant(s)

Versus

The New India Insurance Co. Ltd and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Akashdeep Singh, Advocate,
for the appellant(s).

Mr. M.B. Jain, Advocate,
for respondent No. 1.

JITENDRA CHAUHAN, J.

This appeal has been filed by the driver and the owner of the offending vehicle against the award dated 03.01.2011 passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'), Bhiwani vide which the Insurance Company was granted right to recover the amount of compensation from the appellants.

In brief, the facts of the case are that on 27.04.2009, Yadverendra Singh was returning from community lunch (Bandhra) in a pick up vehicle bearing registration No. HR-61-3370 which was being driven by respondent No. 1. The vehicle struck against the tree which resulted into the death of Yadverendra Singh. The claimants i.e the widow and the son of Yadverendra Singh filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'The Act'). It was pleaded by the claimants that the appellant No. 1 was driving the vehicle in a rash and negligent manner and caused death. A FIR was got registered on 28.04.2009. The Learned Tribunal vide the impugned award awarded a sum of Rs. 4,98,000/- as compensation to the claimants along with interest of 6% per annum. However, the Insurance Company was granted the right to recover the amount of compensation from the driver and owner of the offending vehicle. It was observed that the driver of the offending vehicle had a license to drive a motor vehicle i.e LMV, MMV, HMV. He did not have a license to drive a goods vehicle. It was further contended that the offending vehicle was carrying passengers. The vehicle did not carry any goods and only the passengers were being carried. There was no evidence that the passengers were owners of the goods nor was there any evidence that the goods were carried in the vehicle.

It is contended on behalf of the learned counsel for the appellants that the Tribunal fell in grave error in granting recovery rights to the Insurance Company. It is further stated that the driver of the offending vehicle had a HMV license. Once the driver had a HMV license, he could also drive the offending vehicle i.e pick up. It is also contended that the vehicle in question was carrying goods and the owner of the goods was also travelling in the offending vehicle. Therefore, there was no violation of the terms and conditions of the policy and the driver of the offending vehicle was competent to drive the vehicle while carrying goods as well as owners thereof in the same.

Further, he refers to the statement of PW-2 Jagdish, who tendered his evidence PW2/A, wherein he had stated that he along with Satbir was going to their village in a pick up and was travelling with the goods. The vehicle was driven by Roshan. He further stated that he lodged the FIR Ex. P/4. On the strength of the same, it is sought to be argued that the vehicle in question was carrying goods as well as the owners, therefore, the Tribunal fell in error in granting recovery rights.

On the other hand, the learned counsel for the Insurance Company states that for driving a commercial goods vehicle a special endorsement is required to be made on the driving license. In the present case, there was no endorsement on the license of the driver. He supports the award passed by the Tribunal.

I have heard learned counsel for the parties and gone through the records of the case. As regards the first contention raised by the learned counsel for the appellants that the driver was competent to drive the vehicle as he was holding HMV license, this Court is of the opinion that in the absence of special endorsement qua commercial goods vehicle, the driver was not competent to drive the vehicle in question.

So far as the second contention is concerned, though PW-2 Jagdish tried to support the case of the appellants i.e the driver and owner, his testimony does not carry the case of the appellants further. Neither in the FIR Ex. P/4 nor in the written statement filed by the appellants, it was averred that the vehicle in question was carrying goods as well. The evidence of PW-2 Jagdish is beyond the pleadings. In the initial version recorded in the FIR Ex. P4, the case of the claimants was that the vehicle carrying the passengers met with an accident. It was nowhere stated that the vehicle in question was carrying goods. Subsequently, the claimants also nowhere stated in the claim petition that the vehicle was carrying goods. Even in the written statement filed by respondents No. 1 and 2, similar stand was taken. With this overwhelming evidence on record, this Court is of the opinion that the Tribunal has rightly held that the vehicle in question was carrying passengers and the Insurance Company has rightly been given right to recover the amount of compensation from the appellants.

Finding no merit, the present appeal is dismissed.

17.02.2016 **(JITENDRA CHAUHAN)**
sumit **JUDGE**