IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 2932 of 2011(O&M)
Date of decision: 28.01.2016

National Insurance Company Ltd.

....Appellant

Versus

Sushila and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

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Present: Mr. Paul S. Saini, Advocate for the appellant.

Mr. R.S. Sharma, Advocate for respondents No. 4 and 5.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed by the Insurance Company against the award dated 25.11.2010 on the ground that liability has wrongly been cast on it.

Brief facts of the case are that on 7.5.2008 a Mahindra Pick-up Jeep bearing No. HR-39-A-3860 was boarded by petitioners Baljeet, Pawan and deceased Rajesh Kumar at village Siswal for going to Village Khasa Mahajana. The said jeep was being driven by respondent No.1 in a rash and negligent manner. He was asked to be cautious by the petitioners but he did not pay any heed to their request. In the process of overtaking a truck, respondent No.1 hit the jeep with a big stone lying on the side of the road due to which the tyre of the jeep got burst and it turned turtle. As a result of this all the occupants of the jeep sustained multiple injuries. Rajesh Kumar succumbed to his injuries. The Tribunal dismissed the petitions filed by injuredpetitioners Pawan and Baljeet whereas the one filed by the legal heirs of deceased Rajesh Kumar i.e. the present respondents, was allowed and a compensation of Rs. 4,81,924/- was awarded to them to be payable by respondent No.3-insurance company which was to then recover the same from respondents No. 1 and 2. Against that award the insurance company has come up in appeal.

Learned counsel for the insurance company has pointed out that neither was it pleaded in the claim petition nor was it the case of the owner or the driver in their replies that the deceased was an authorised person and nor was any evidence led to show that the deceased was an authorised person. In the circumstances he has assailed the finding of the Tribunal to the effect that since the policy permitted two authorised persons apart from the driver to travel in the jeep, it would mean that the appellant- insurance company was liable. His argument that in the absence of any averment or evidence that the deceased was an authorised person it had to be held that the deceased was either a gratuitous or a fare paying passenger and, to that extent was an unauthorised person and, therefore, compensation could not have been foisted upon the appellant.

Learned counsel for the respondents points out that the earlier also this appeal was allowed and the matter was carried by the owner and driver to the Hon'ble Supreme Court and the Hon'ble Supreme Court remanded the case back with the following observation:-

> *"....The case of the appellants is that the deceased was not a gratuitous passenger in the goods vehicle but was a person authorised to travel in the vehicle.*
>
> *It has been pointed out that even though the owner and the drive of the offending vehicle were summoned by the Insurance Company as RW1 and RW2, no question was out to them in regard to the deceased travelling in the offending vehicle as a gratuitous passenger.*
>
> *We find that this aspect has not been considered by the High Court. The impugned order passed by the High Court is somewhat cryptic.*

> *In these circumstances, we set aside the impugned order passed by the High Court and remand the matter back to the High Court for fresh consideration on merits including appreciation of evidence on record.*
>
> *Accordingly, the appeal stands allowed.........”*

As per learned counsel the absence of the insurance company to put any suggestion regarding the deceased being gratuitous passenger would necessarily give rise to the conclusion that he was an authorised passenger.

Learned counsel for the appellant has countered by repeating the argument that in the present case neither was there any averment that the deceased was an authorised passenger nor any evidence was led to that effect. On the contrary Baljeet (PW4) had mentioned that there were four passengers in the jeep. It is his contention that once there was no averment or evidence that the deceased was a gratuitous passenger, no duty was cast on the insurance company to put a specific question in this regard or to lead any evidence to the effect that the deceased was an unauthorised person.

I find merit in this argument. Unless a case was set up that the deceased was an authorised person, the necessary implication would have to be that he was an unauthorised person and, therefore, onus could not have been cast on the insurance company to prove that he was an unauthorised occupant.

Resultantly, it has to be held that the appellant was not liable to indemnify the owner and driver for the payment which has to be paid to the claimant-respondents.

The appeal is allowed.

January 28, 2016 **(AJAY TEWARI)**
sunita **JUDGE**