IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision: 06.01.2016

1. FAO No.1345 of 2012 (O&M)

New India Insurance Co. Ltd.

...**Appellant**

versus

Sudarshan Singh and others

...Respondents

2. FAO No.1344 of 2012 (O&M)

New India Insurance Co. Ltd.

...**Appellant**

versus

Smt. Gurpreet Kaur and others

...Respondents

3. FAO No.1346 of 2012 (O&M)

New India Insurance Co. Ltd.

...**Appellant**

versus

Sudarshan Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.K. Prajapati, Advocate,
for the appellant(s).

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RITU BAHRI , J.

CM-5625-CII of 2012

For the reasons mentioned in the application, same is allowed and delay of 4 days in filing the appeal is condoned.

Main appeals

This order shall dispose of FAO Nos.1344, 1345 and 1346 of 2012 together as all these appeals have arisen out of one accident. For reference, facts are being taken from FAO No.1345 of 2012.

New India Insurance Co. Ltd.-appellant has filed all the above appeals against the Awards dated 24.10.2011 passed by the Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (for short 'the Tribunal') whereby separate claim petitions filed by Gurpreet Kaur and Sudarshan Singh etc. under Sections 166 and 163-A of the Motor Vehicle Act (for short 'the Act') have been allowed. In claim petitions i.e. MACT Case RBT No.13 and 15 of 2010, claimants Gurpreet Kaur and Sudarshan Singh sought compensation on account of injuries suffered by them in a motor vehicular accident, which had taken place on 25.05.2006, whereas in MACT Case RBT No.12 of 2010, Sudarshan Singh etc. sought compensation on account of death of Smt. Parveen Kaur in the aforesaid accident.

In brief, the facts of the present case are that on 25.05.2006, Parveen Kaur was going from Chandigarh to village Haveli Chobedar, Qadian Road, Batala along with Kanwal Kaur, Sudarshan Singh etc. in a vehicle i.e. Qualis bearing registration No. PB-08-AG-8044, which was being driven by Rajiv Kumar in a rash and negligent manner. At abut 7.30 A.M., when they reached near the area of village Khatkal Kalan and crossed the statute of Bhagat Singh near Banga, in the meantime, a calf came on the road from the right side. On seeing him, the Rajiv Kumar-driver applied sudden brakes, but due to high speed of the vehicle, he could not control the same. Due to this, the vehicle went off the road on its left side and struck against a *Shisham* (Tahali) tree and rolled twice, as a result of which, all the occupants of the offending vehicle sustained multiple, simple and grievous injuries. Due to this accident, Smt. Parveen Kaur died at the spot on account of injuries sustained by her. Sudarshan Singh and Gurpreet Kaur also sustained multiple injuries. Thereafter, Gurpreet Kaur and Sudarshan Singh were shifted to Guru Nanak Mission Hospital, Dhahan Kaleran, from where Gurpreet Kaur was referred to DMC, Ludhiana, where she remained admitted from 25.05.2006 to 17.06.2006. Sudarshan Singh-injured remained admitted in Guru Nanak Mission Hospital, Dhahan Kaleran for three days and thereafter, he was taken to Amandeep Hospital, Amritsar, where he remained admitted from 25.05.2006 to 24.06.2006. The accident had taken place on account of rash and negligent driving of aforesaid vehicle by Rajiv Kumar. Thereafter, the claimants filed separate claim petitions before the Tribunal.

Upon notice, Rajiv Kumar and Ravi Verma-respondents (driver and owner of the offending vehicle) contested the claim of the claimants by filing separate written statement(s). On merits, they had denied that the offending vehicle had met with any accident. Ravi Verma (respondent No.2 in the claim petition(s) before the Tribunal) had taken a specific plea that he had sold the offending vehicle to Kewal Krishan son of Balwinder Kumar, resident of Targarh, P.O. Dharmkot Bagga, Tehsil Batala, who had executed an affidavit dated 19.03.2005 in his favour. Said Kewal Krishan further sold the offending vehicle to Baldev Raj son of Gopal Dass, resident of outside Bhandari Gate, Batala, District Gurdaspur vide affidavit dated 12.08.2005. Therefore, he was not liable to pay any compensation.

Respondent No.3-New India Insurance Company (appellant herein) filed separate written statement taking preliminary objection that driver of the offending vehicle was not holding a valid and effective driving license at the time of accident. On merits, it was stated that no accident had taken place. It was admitted that the vehicle was insured with respondent No.3-Insurance Company.

Thereafter, Kewal Krishan and Baldev Raj were impleaded as respondent Nos. 4 and 5 in the claim petition. They were ordered to be served through publication. However, publication could not be issued for want of publication charges. Consequently, petition against those respondents was dismissed in default for want of prosecution vide order dated 04.02.2011.

The Tribunal, after going through the evidence led by the parties, returned a finding that the accident had taken place on account of rash and negligent driving of the offending vehicle bearing registration No.PB-08-AG-8044 by Rajiv Kumar. In MACT case RBT No.12 of 2010, claimant-Sudarshan Singh appeared as PW-1 and tendered his affidavit, Ex.PA, narrating the entire facts. The version of this witness had been corroborated in DDR No.20 dated 25.05.2006. Rajiv Kumar-driver of the offending vehicle stepped into the witness box as RW-1 and tendered his affidavit, Ex.RA, admitting the factum of accident. He had proved copy of DDR as Ex.R1. The said petition being filed under Section 163-A of the Act, the claimants were required to prove that Parveen Kaur had died on account of road accident. Issue No.1 was decided in favour of the claimants.

While deciding issue No.3, the Tribunal took into consideration affidavit, Mark-A, as per which, Ravi Verma was registered owner of the offending vehicle, but he had sold the same to Kewal Krishan son of Balwinder Kumar. Kewal Krishan further sold the said vehicle to Baldev Raj son of Gopal Dass before the date of accident as was clear from affidavit, Mark-B. Hence, Ravi Verma was not liable to make any payment. The Tribunal held that affidavits (Mark A and B) had not been proved on the file in legal manner, as they were neither attested nor verified properly. Accordingly, finding on issue No.2 was decided against Rajiv Kumar (respondent No.2 in that petition). Since the offending vehicle was insured, respondent respondent Nos.1 to 3 i.e. driver, owner and insurance company were held liable to make payment of compensation.

The compensation was assessed by taking the income of deceased-Parveen Kaur as Rs.1400/- per month i.e. Rs.16,800/- per annum. Keeping in view the age of deceased as 50 years, multiplier of 11 was applied. Rs.2000/- were granted on account of funeral expenses. Rs.5000/- were awarded to Sudarshan Singh-husband on account of loss of consortium. Total compensation awarded was Rs.1,91,800/-.

Similarly, in <u>MACT case RBT No.15 of 2010,</u> claimant-Sudarshan Singh was awarded compensation to the tune of Rs.78,790/- on account of the injuries received by him in the aforesaid accident.

In <u>MACT case RBT No.13 of 2010</u>, claimant-Gurpreet Kaur was awarded Rs.1,30,793/- as compensation, as she had also sustained injuries in the same accident.

The Insurance Company has come up in appeal against the impugned Awards passed by the Tribunal on the ground that the offending vehicle was being used as a taxi and same was being used for higher purposes. The owner or driver was not having any permit for plying the offending vehicle as taxi and the driver has contravened the terms and condition of the insurance policy. Therefore, the Insurance Company-appellant was not liable to make payment of compensation.

Learned counsel for the appellant has referred to the cross-examination of Sudarshan Singh (PW-1), in which he had stated that more than 9-10 persons were travelling in the offending vehicle and they had paid Rs.15/16 as "taxi charges." This evidence was sufficient to return a finding that the owner of offending vehicle, in contravention of the insurance policy, used the vehicle as taxi and hence, the insurance company could not be imposed liability of making payment of compensation. He has referred to the judgment passed by the Himachal Pradesh High Court in ***National Insurance Co. Ltd. Vs. Santosh Devi and others,*** 2011 ACJ 1753 and another judgment passed by the Madhya Pradesh High Court in ***New India Assurance Co. Ltd. Vs. Babulal and others,*** 2011 ACJ 2879, to contend that once a private vehicle was used as taxi on the date of accident, the Insurance Company could not be held liable to make payment of compensation. Moreover, there was no reason to discard the statement of the claimant that he had paid rent to driver of the vehicle treating it to be a taxi.

The main question for consideration in these appeals is, "whether the offending vehicle was being plied as taxi without any permit and in this manner, owner/driver had contravened the terms and conditions of the insurance policy or whether the insurance company was liable to pay compensation."

Rajiv Kumar-driver of qualis jeep No. PB-08-AG-8044, appeared in the witness box as RW-1 and in his cross-examination, stated that Baldev Raj was the owner of offending vehicle. He further deposed that 7/8 passengers were travelling in the said vehicle on the date of accident. Relevant portion of his cross-examination is reproduced as under:-

> "....I got my driving licence issued from DTO Gurdaspur. I was driving the Qualis jeep which was LTV. I am not in possession of the registration

> certificate of the Qualis. The owner of the said vehicle i.e. Qualis which bears registration No. PB08-8044. 7/8 passengers were traveling in the said vehicle on the date of accident. I have brought the said passengers from Chandigarh to Batala. The said vehicle is not a taxi. I have not collected the fare from the said passengers.........”

Admission of the driver makes it abundantly clear that the offending vehicle was being driven as a taxi and 7/8 passengers were travelling in the same, who were taken from Chandigarh to Batala. Since the vehicle was not insured as a 'commercial vehicle' and was being plied without any permit as a taxi, the terms and conditions of the insurance police stood violated.

Reference, at this stage, can be taken to a decision given by the Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Meena Aggarwal,*** 2009 (1) RCR (Civil) 877. This was a case where the car had been insured for personal use, but was being used as a taxi. As per terms and conditions of the insurance police, the insurance company was not held liable to make payment of compensation. It was further observed as under:-

> “5. The matter came up for consideration again before this Court in ***National Insurance Corpn. Ltd. v. Kanti Devi, 2005 (3) RCR (Civil) 388,*** wherein this Court upon consideration of the observations made in Swaran Singh's case opined:
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> > “12. The decision in Swaran Singh case was ***not*** before either MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to MACT for fresh consideration. It shall ***permit*** the parties to lead such further evidence as they may intend to lead. The matter shall be decided keeping in view the principle enunciated by this Court in Swaran Singh case.”
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> 6. In a case of this nature, therefore, the owner of a vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or ***not***.”

A Division Bench of Madhya Pradesh High Court in ***Krishnapal***

Singh Vs. Gulzar Singh and others, 2008 ACJ 1090, held that where the driver was having a licence to drive a light motor vehicle only and was not having a licence to drive a commercial vehicle, there was breach of terms of the contract and the insurance company was not liable to make payment of compensation. The offending vehicle was not carrying a route permit and the same had been insured for private use and not for commercial purpose, therefore, the insurance company was exonerated of its liability to make payment of compensation. Further, reference can be made to the judgment passed by the Himachal Pradesh High Court in ***National Insurance Company's*** case (supra), wherein a private vehicle was being used as a taxi. Therefore, the insurance company was exempted from making payment of compensation.

In the facts of the present case, since the offending vehicle i.e. Qualis was insured for private use, but the same was being plied as a taxi, the insurance company-appellant cannot be held liable to make payment of compensation as there was violation of terms and conditions of the insurance policy.

Accordingly, in view of the law laid down in the above authorities, the impugned Awards of the Tribunal are modified to the extent that the Insurance Company-appellant shall make payment of compensation and thereafter, recover the same from the owner and driver of offending vehicle.

Resultantly, all the appeals i.e. FAO Nos.1344, 1345 and 1346 of 2012 stand partly allowed accordingly.

(RITU BAHRI)
JUDGE

06.01.2016
ajp