IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1491-2012 (O&M)
Date of decision: 30.05.2016

New India Assurance Co. Ltd. ...Appellant

Versus

Smt. Hurran and others ...Respondents

FAO-1492-2012 (O&M)

New India Assurance Co. Ltd. ...Appellant

Versus

Dilshad and another ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Mr. Neeraj Kumar, Advocate
for respondent No.3 in FAO No.1491 of 2012 and
for respondent No.2 in FAO No.1492 of 2012

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1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest ? Yes

JITENDRA CHAUHAN, J.

By way of this single judgment, I shall dispose of the aforesaid two appeals.

The present appeals have been directed against the impugned award dated 17.10.2011, passed by learned Motor Accidents Claims Tribunal, Rohtak, (for short, 'the Tribunal').

Brief facts of the case are that two claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') claiming compensation with the allegation that on 13.04.2008 at about 1.30 p.m., deceased Nafis along with Alijan, claimant/appellant-Dilshad, Nathu, Abdullah and Salim were travelling on TATA-407 bearing registration No.HR-34-GA-0136 and going to village Bhainsru. After unloading the cattles when they reached near the turning of village Luhar Heri, the vehicle turned turtle due to rash manner of driving by the driver, with the result the occupant, Nafis lost his life and other occupants including claimant/appellant, Dilshad sustained multiple grievous injuries. The Tribunal held the insurance company liable to indemnify the insured.

It is contended that the learned Tribunal has wrongly fastened the liability upon the appellant as the passengers travelling in a goods vehicle as gratuitous passengers are/were not covered under the policy in question. Therefore, no liability can be fastened upon the appellant on account of any injury or death of a person travelling in the goods carrying vehicle as gratuitous passengers. Thus, the impugned award passed by the learned Tribunal is liable to be set aside. The learned counsel cites **'National Insurance Co. Ltd. Vs. Bommithi Subbhayamma'**, 2005(4) RCR (Civil) 829, **'New India Assurance Co. Ltd. Vs. Vedwati and others'**, 2007(2) RCR (Civil) 115 and **'New India Assurance Co. Ltd. Vs. Asha Rani'**, 2003(1) RCR (Civil) 671.

On the other hand, the learned counsel for the respondent-driver-cum-owner stated that the learned Tribunal has rightly passed the impugned award and prayed for dismissal of the present appeals. He placed reliance upon **'National Insurance Co. Ltd. Vs. Smt. Chand Chhabra and other'**, 2012 ACJ 326, **'P. Venkata Ramana Vs. Chintaguntla Kumari and others'**, 2010(4) AIIMR (JS) 10 and **'The Oriental Insurance Co. Ltd. Vs. Thukarama Adappa and others'**, 2007 ACJ 1497.

I have heard the learned counsel for the parties and perused the entire record on file.

The question raised before this Court is as to whether the deceased, Nafis and appellant/injured-Dilshad who were travelling as gratuitous passengers in the offending vehicle would fall within the meaning of 'third party' and thus, would be covered by the statutory policy under Section 147 of the Act. The object and purpose of Sections 146 and 147 are that policy of insurance should cover liability in respect of death or bodily injury of person including owner of the goods or its authorized representative who may be carried in a goods vehicle/carriage as defined in Section 2(14) of the Act. Reference in this regard can be made to **'Rani Gupta and others Vs. M/s United India Insurance Co. Ltd. and others'**, 2009(2) RCR (Civil) 900. In the instant case, the stand taken by the claimants is that on 13.04.2008 at about 01:30 p.m. deceased, Nafis along with injured, Dilshad, Alijan, Nathu, Abdullah and Salim were travelling on Tata 407 bearing registration No.HR-34G-A 0136 and going to village Bhainsru and after unloading the cattles when they reached near the turning of village Luhar Heri, the vehicle turned turtle. Admittedly, deceased, Nafis and injured, Dishad were authorized representatives of the owner on the offending vehicle and thus covered under the policy of insurance.

Moreover, the plea of gratuitous passengers has been raised for the first time before this Court in appeal, which cannot be allowed. Reliance can be placed on the judgment of this Court in **'New India Assurance Co. Ltd. Vs. Bachhi Bai and others'**, 2011 ACJ 2475, wherein it was held that if a plea is not taken and a point for consideration is not specifically framed whether the deceased was a gratuitous passenger in the vehicle, it cannot be urged for the first time in appeal. Thus, it can be safely concluded that the insurance company cannot plead for exclusion of liability and cannot deny indemnity to insured on the ground of violation of terms of policy. The ratio of reported case law cited by learned counsel for the appellant does not apply to the facts of the instant case.

For the foregoing discussion, this Court finds no fault in the findings recorded by the learned Tribunal. Consequently, the present appeals are hereby dismissed.

30.05.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**