874.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3088 of 2012 (O&M)
Date of decision:18.02.2016

HDFC ERGO General Insurance Company Limited ... Appellant

versus

Ram Pyari and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajneesh Malhotra, Advocate,
for the appellant.

Mr. Pankaj Midha, Advocate,
for respondents 6(A) to 6(F)

----

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

K.Kannan, J. *(Oral)*

1. The Insurance Company is in appeal against the liability cast on the insurer for death of a person travelling on the mudguard of the vehicle. The counsel refers to me to some judgments which referred to a claim as possible if a person is seated on a mudguard. I discard all these judgments as not stating the law and they are per incuriam. I state so for the following reasons.

2. A tractor is not meant to carry passengers and it specifically states under Section 2(44) that it is not itself constructed

SANJEEV KUMAR
2016.03.01 09:33
I attest to the accuracy and
integrity of this document

to carry any load other than equipment used for the purpose of propulsion. A policy of insurance that insures the vehicle is for any damage or injury which is caused for which the policy is compulsory in terms of Section 147 of the Motor Vehicles Act. The liability for passengers (apart from "3rd parties") obtains under the scheme of Section 147 for the following class of persons: (i) passenger in a service vehicle; (ii) owner of goods travelling along with goods; (iii) loadman or persons to whom the coverage is possible under the Employees Compensation Act of 1923. Apart from the above persons, a paid driver or a conductor who have the benefit of claim arising out of and in the course of employment requiring to be covered under the Employees Compensation Act are also bound to be covered. These are the only persons who will have the benefit of claims being answered with liability cast on the insurer and for any other class of persons, they shall be drawn through specific policy coverage. After the decision of the Supreme Court in ***Pushpabai Purshottam Udeshi Versus Ranjit Ginning and Pressing Company-1977 ACJ 343 (SC)***, IDRA circulars directed insurer to take liability for passengers in a private car also, if a comprehensive policy is taken. An extra premium that can cover the risk to a passenger in a private vehicle cannot extend to a person who is unauthorized.

SANJEEV KUMAR
2016.03.01 09:33
I attest to the accuracy and
integrity of this document

3. Courts have always recognized certain classes of persons as not leaving a trail of claim payable against the insurer. They are: (i) gratuitous passengers in a goods vehicle (see: ***New India Assurance Company Limited Versus Asha Rani-2003(2) SCC 223)***; (ii) passengers for hire or reward in goods carriages (see: ***M/s National Insurance Company Limited Versus Baljit Kaur and others-2004(2) SCC 1)***; (iii) in respect of two wheelers, a borrower from an owner of a vehicle (see: ***Ningamma and another Versus United India Insurance Company Limited-2009(13) SCC 710)***. This court itself had occasions to deal with the untenability of claims arising on account of persons sitting on mudguard of the tractor making claims for compensation. (see:***United India Insurance Company Limited Versus Smt. Santra Devi-2010(4) PLR 432; United India Insurance Company Versus Ramji Lal-2010(4) PLR 436; and Krishan Versus Tarawati widow and others-2011(3) PLR 29***). The claim for compensation is, therefore, untenable and the Tribunal ought to have dismissed it.

4. ***New India Assurance Company Versus Bimla-(2010) 2 RCR (Civil) 27***, relied on by the respondent was the case of hired labourer travelling in trolley for transporting agricultural goods. They are persons who have to be compulsorily covered under Section 147 of the Motor Vehicles Act read with Employees Compensation Act, 1923 and hence, not applicable. ***The Oriental***

SANJEEV KUMAR
2016.03.01 09:33
I attest to the accuracy and
integrity of this document

Insurance Company Limited Versus Vijay Singh and others-2007 (1) PLR 600 examined the case of a person travelling on mudguard of a tractor attached to a trailer which was carrying goods of which the mudguard traveller was an owner. Section 147 requiring compulsory insurance for an owner of goods travelling with goods was applied. It is doubtful if this judgment is any longer good law, particularly in view of the judgment of the Supreme Court in ***National Insurance Company Limited Versus Cholleti Bhartamma-2008(1) SCC 423***. This Supreme Court judgment is authority that even an owner can not travel in unauthorized places of vehicle which is not meant to seat passengers while rejecting a claim on behalf of the owner, who was not seated in the cabin in the bay meant for placing goods. A mudguard literally guards against mud being splashed on the driver and not a seating place. In any event in this case, there is no plea that the passenger on the mudguard had any goods of which he was the owner being transported at the time of the accident.

5. The only liability that I will still fasten on the insurer is that which is contemplated under Section 140 of the Motor Vehicles Act under no fault liability against an insurer for the only reason that a particular vehicle which was involved in the accident had a policy cover. This aspect has been considered by the Supreme Court in ***Eshwarappa @ Maheshwarappa and another Versus C. S.***

SANJEEV KUMAR
2016.03.01 09:33
I attest to the accuracy and
integrity of this document

<u>Gurushanthappa and another-2010(8) Scale 263</u> that restricted the liability to what Section 140 of the Motor Vehicles Act sets out as ₹25,000/- with interest. The liability in excess of the same is against law and it is set aside. The claimants shall have the benefit of recovery against the owner and driver. If any portion of the claim in excess of the amounts stipulated above has been already recovered from the insurer, in the interest of justice, the insurer will not press for recoveries against the claimants but will exercise such a right against the owner and driver in execution proceeding.

6. The award is modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

18.02.2016
sanjeev

SANJEEV KUMAR
2016.03.01 09:33
I attest to the accuracy and
integrity of this document