In the High Court of Punjab and Haryana at Chandigarh

FAO-8211 of 2014(O&M)
Date of Decision: 30.11.2016

Mahender

---Appellant

vs.

Saneh Lata and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr., V.K.Sheoran, Advocate
for the appellant
None for respondent Nos. 1 to 3
Mr. M.B.Jain, Advocate
for respondent No. 7

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Rekha Mittal, J.

The driver and owner of the offending vehicle, Jeep bearing No. HR-39-A 7406 has filed the present appeal to assail findings of the Tribunal exonerating the insurance company of its liability to pay compensation.

The facts relevant for disposal of the present appeal are that Saneh Lata and others filed an application under Section 166 of the Motor

Vehicles Act, 1988 (in short "the Act") for grant of compensation in regard to death of Anil Kumar in a motor vehicular accident due to rash and negligent driving of Jeep bearing No. HR-39-A-7406 by Mahender (appellant herein). The Motor Accidents Claims Tribunal, Bhiwani (in short "the Tribunal") accepted plea of the claimants that Anil Kumar died due to rash and negligent driving of the aforesaid vehicle by Mahender on the fateful day of 7.11.2011. Compensation to the tune of Rs. 8,84,000/- was assessed, payable with interest @ 6% per annum from the date of petition till realization. The Tribunal while deciding issue No. 3 has held in paras 23 and 24 of the award that the deceased along with Sunil Kumar PW1 and 4-5 passengers was travelling as a paid passenger which amounts to violation of terms and conditions of the insurance policy and the insurance company is entitle to be exonerated. It has further been held that if testimony of Sunil Kumar PW1 recorded by recalling him for further cross examination is accepted, the deceased was a gratuitous passenger in the vehicle and no extra premium was paid by the insured to cover any such gratuitous passenger, the insurance company cannot be held liable to pay compensation in the light of judgments **United India Insurance Company Limited Shimla vs. Tilak Singh and others 2006(2) PLR 297** and

Oriental Insurance Company Limited vs. Meena Variyat 2007(2) Law Herald (SC) 1309.

Counsel for the appellant has submitted that though the insured has not committed any breach of terms and conditions of the contract of insurance but even if it is so held, the insurance company cannot be altogether exonerated of its liability to pay compensation. It is further argued that in case of breach of any such terms and conditions that constitute defence under Section 149(2) of the Act, the insurance company, at best, can be given recovery rights after satisfying the award towards the claimants.

Counsel for the insurance company, on the contrary, has supported the findings recorded by the Tribunal with the submission that the policy obtained by the insured is only act policy, therefore, liability to pay compensation qua injury or death of a gratuitous passenger cannot be fastened upon the insurer.

I have heard counsel for the parties, perused the paper book particularly the records.

Sunil Kumar, one of the occupants of the ill fated jeep and an alleged eye witness to the occurrence tendered into evidence his affidavit by way of examination in chief. In his cross examination conducted on 29.7.2013, he has deposed that "there were total 4-5 passengers travelling in the jeep. We were travelling as a paid passengers in the jeep in question. I do not know the other passengers travelling in the jeep except deceased Anil Kumar". The witness was recalled for cross examination and his cross examination was conducted on 27.8.2013. He had changed his stance with regard to payment of fare to driver of the jeep and said "I had not paid any fare to driver of the jeep. The other passengers travelling in the said jeep have also not paid any fare to the jeep driver in my presence. Deceased Anil Kumar has also not paid any fare to the jeep driver. Driver Mahender Singh was already known to him as well as to deceased Anil being from our neighbouring village and due to the village relationship, the driver had given us a lift in his vehicle from Satnali Market".

The learned Tribunal has held that in case statement of Sunil Kuamr recorded on the first occasion is accepted, jeep in question was being used by the insured cum driver for hire or reward. Further, if second statement of the witness is considered, deceased is to be treated as a gratuitous passenger.

Counsel for the appellant has not disputed that the policy obtained by the insured is only an act policy and there was no extra premium paid by the insured covering liability qua passengers travelling in the jeep. The insurance company has no liability to pay compensation qua injury or death of a gratuitous passenger under the statutory/act policy as has been laid down by Hon'ble the Supreme Court of India in the judgments referred to in the award. In this view of the matter, I do not find any error much less illegality in the findings of the Tribunal that the insurance company is entitled to be exonerated of its liability to pay compensation, in the prevailing circumstances.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

30.11.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No