IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5142-2016
Date of Decision:- 04.10.2017

New India Assurance Co. Ltd.

.....Petitioner

Versus

M/s ACC Ltd.

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Avi Dhankar, Advocate
for Mr. Hemant Bassi, Advocate, for the respondent.

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RITU BAHRI, J. (Oral)

Present petition has been filed under Article 227 of the Constitution for setting aside the impugned order dated 17.08.2015, passed by learned Motor Accident Claims Tribunal, Ambala, whereby the execution application filed by the petitioner-The New India Assurance Company Ltd., for seeking recovery from the respondent-M/s ACC Limited, has been dismissed.

A short point for consideration in this revision petition is whether the petitioner-Insurance Company (respondent No.3 in the claim petition) can recover the compensation made on behalf of respondent Nos.4 and 5 in execution or not?

Perusal of the Award dated 27.11.1987 (Annexure P-1), passed by the Motor Accident Claims Tribunal (Additional District Judge), Ambala, shows that while returning the findings on issue No.4 it was held that the deceased was travelling as a passenger in truck No.HRA-9122 and Insurance Company-respondent No.6 was not liable to make the payment of compensation to the claimant as he was a gratuitous passenger and he was not covered under the Insurance Policy. Keeping in view the judgment of Full Bench in case **Prithvi Singh** Vs. **Binda Ram 1987 ACJ 167**, respondent Nos.1 to 5 were held liable to make the payment of compensation jointly and severally.

Heard learned counsel for the parties.

As is evident from the record that award (Annexure P-1) has not been modified even in FAO 260-1988, decided on 03.12.2008 (Annexure P-2), by this Court, with regard to liability of the petitioner-Insurance Company. Further, in execution, vide order dated 23.07.2011 (Annexure P-3), the executing Court gave the directions to the petitioner to satisfy the award and liberty was granted to recover the amount from respondent Nos.4 and 5. Thereafter, vide order dated 07.09.2011 (Annexure P-4), the amount of ₹2,58,589/-, which was deposited on behalf of respondent No.4, was released to the decree holder. But when the petitioner-Insurance Company filed an execution petition (Annexure P-5) for recovering this amount from respondent Nos.4 and 5, the same has been dismissed, vide order dated 17.08.2015, by observing that once respondent No.6 was not held liable to make the payment of compensation, no recovery from respondent Nos.4 and 5 could be affected.

This observation of the Executing Court is contrary to the Award (Annexure P-1), passed by the Tribunal, where while giving findings on issue No.4 it has been observed that respondent No.6-Insurance Company was not liable to make the payment of compensation as respondent Nos.4 and 5 was carrying the deceased as a gratuitous passenger and it was not covered under the Insurance Policy.

Hence, as per Award (Annexure P-1), respondent No.6 has been absolved, liability of respondent Nos.4 and 5 was kept intact and the compensation was to be paid by respondent Nos.1 to 5 jointly and severally. Accordingly, the present revision petition is hereby allowed and impugned order dated 17.08.2015, passed by the Executing Court, is hereby set aside. The Executing Court is directed to proceed with the execution against respondent Nos.4 and 5, in accordance with law.

(RITU BAHRI)
October 04, 2017 JUDGE
naresh.k

Whether speaking/reasoned	Yes
Whether reportable	No