In the High Court of Punjab and Haryana at Chandigarh

FAO-1370 of 1993
Date of Decision:27.11.2017

New India Assurance Company Limited

---Appellant

vs.

Guddi Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Neeraj Khanna, Advocate
for the appellant

Mr. Puneet Singla, Advocate
for respondent Nos. 1 to 5

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Rekha Mittal, J.

The present appeal directs challenge against award dated 26.4.1993 passed by the Motor Accidents Claims Tribunal, Narnaul (in short "the Tribunal") whereby compensation has been awarded in regard to death of Sultan Singh in a motor vehicular accident that took place on 30.10.1990 due to rash and negligent driving of four wheeler No. HR- 29A-4562 by Sumer Singh, its driver.

The Tribunal assessed compensation to the tune of Rs. 80,000/- payable with interest at the rate of 12% per annum from 1.2.1991 till payment.

The sole submission made by counsel for the appellant is that as Sultan Singh deceased was owner/insured of the alleged offending vehicle, the insurance company has no obligation under law to compensate the claimants i.e. legal representatives of deceased Sultan Singh. It is further argued that there was no special contract between the insurer and insured covering risk of injury or death of the insured, therefore, the insurance company has been wrongly fastened with liability to pay compensation. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India ***Oriental Insurance Company Limited vs. Rajni Devi and others 2008(4) RCR (Civil) 905, New India Assurance Company Limited vs. Sadanand Mukhi and others 2009(1) RCR (Civil) 817*** and ***National Insurance Company Limited vs. Laxmi Narain Dhut 2007(2) RCR (Civil) 345***.

Counsel representing the claimants, on the contrary, has supported the award whereby the claimants have been held entitled to get compensation to be paid jointly and severally by the driver and insurer of the vehicle in question. In support of his contention, he has referred to judgment of this Court ***ICICI Lombard General Insurance Company Limited vs. Narender Kumar 2007(3) RCR (Civil) 638***. Reference has also been made to judgment of the Sikkim High Court ***Shri Tenzing Wangdi Lepcha vs. The Branch Manager, United Insurance India Insurance Company Limited 2017 ACJ 1425.***

I have heard heard counsel for the parties, perused the paper book and the documents made available, by counsel for the insurance company, during course of hearing.

There is no denial that vehicle in question is a goods carrier that stands registered in the name of Sultan Singh who got the same insured vide insurance policy that came into force with effect from 11.8.1990 till mid night of 10.8.1991. The insured paid premium of Rs. 5054/-, detailed in copy of the policy. Perusal of the policy makes it evident that the insured paid premium for own damage basic, liability to public risk plus additional premium for L.L. to persons employed in connection with the operation and/or maintaining and/or unloading of motor vehicle IMT-17 and for increased third party property damage limits Section II-I(ii). As per the policy there is no special contract between the insured and insurer on payment of special premium for covering risk of injury or death of the insured/owner. The insurance company is liable to indemnify the insured by satisfying the award passed in favour of a third party. The insured/owner does not fall within the purview and ambit of third party to entitle the legal representatives of deceased Sultan Singh to claim compensation from the insurance company. The contention raised by counsel for the insurance company gets support from the judgments relied upon by the appellant. On the contrary, judgments relied upon by counsel for the claimants do not support the view that the insurance company is liable to pay compensation to the claimants, legal representatives of registered owner /insured of the vehicle in question.

No other point has been raised.

For the foregoing reasons, the appeal is allowed. The award passed by the Tribunal holding the insurance company liable to pay compensation is ordered to be set aside. It is clarified that the claimants shall be entitled to recover compensation from driver of the offending vehicle.

(Rekha Mittal)
Judge

27.11.2017
paramjit

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