

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 76 of 1998 (O&M)

Date of Decision: 14.7.2017

The New India Assurance Co. Limited

.....Appellant

Versus

Ajay Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Neeraj Khanna, Advocate
for the appellant.

None for respondents No. 2, 4 and 7.

Mr. J.S.Toor, Advocate
for respondents No. 5 and 6.

ANITA CHAUDHRY, J

This is the appeal by the insurance company seeking recovery rights on the plea that the goods vehicle was carrying gratuitous passengers and the company could not be made liable since there was breach of the policy conditions.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. The counsel for the appellant has placed on record copy of the pleadings, evidence and the statements of the witnesses. The counsel appearing for both the parties stated that the matter can be decided on the basis of the material available.

Counsel for the appellant submits that it was claimed by the insured that he was an employee of the firm which had engaged the truck to carry flour but there was no proof that the flour had been delivered

anywhere and the truck was empty and the company could not have been held liable and the case is squarely covered by the judgment reported as ***National Insurance Co. Ltd. versus Kaushalaya Devi and others 2008(8) SCC 246.***

The submission on behalf of respondents No. 5 and 6 is that no relief has been claimed against them as they are driver and owner of the second vehicle and are not affected.

Ajay Kumar filed a petition pleading that Roshan Lal his brother was carrying a wholesale business at Anandpur Sahib and Roshan Lal had engaged a truck and he (claimant) was an employee of the firm M/s Assa Ram Roshan Lal and they had to arrange delivery of Atta (flour) which they had taken from Khanna when the accident occurred. The claimants had examined Roshan Lal who deposed that he had engaged a truck and his brother was travelling with him when the accident occurred. He also submitted that his brother was under his employment as salesman and was getting Rs. 5,000/- per month as salary. In the cross-examination he stated that he was maintaining the accounts of the firm and was not an income tax payee but he was paying sale tax. Ajay, claimant took a similar stand as taken in the claim petition pleading that he was employed as a salesman by his brother and they were transporting flour which was to be unloaded at Ghanauli and the accident occurred near Bharatgarh. Besides the oral statement, there is no evidence that the flour was being transported. The person to whom the flour was delivered was not examined nor any receipts or any material was placed on record. The claimants had failed to prove that any commodity had been transported. At the time of the accident the truck was empty. The claimant was not travelling in the truck as owner of the

goods. Therefore, the insurance company is entitled to recovery rights as there was a violation.

The appeal is allowed and the insurance company is given the right of recovery after the payment is made to the claimants.

(ANITA CHAUDHRY)
JUDGE

July 14, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No