

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.413 of 2005
Date of Decision.01.08.2017

Sunil MohanAppellant
Vs
The New India Assurance Co. Ltd. and othersRespondents

2. FAO No.414 of 2005

Sunil MohanAppellant
Vs
The New India Assurance Co. Ltd. and othersRespondents

3. FAO No.415 of 2005

Sunil MohanAppellant
Vs
The New India Assurance Co. Ltd. and othersRespondents

Present: Mr. P.R. Yadav, Advocate
for the appellant.

Mr. Vinod Chaudhari, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellant-owner has preferred three appeals arising out of the same accident against the Award passed by the Tribunal challenging the finding rendered on issue No.7 whereby the insurance company has been given recovery rights to recover the amount of compensation from the owner.

Mr. Yadav, learned counsel appearing on behalf of the appellant, submits that the Tribunal has misled and misdirected itself in not appreciating the oral and documentary evidence in correct perspective. Despite extensive cross-examination, neither in the pleadings nor any of the witnesses either admitted of taking the vehicle on hire or on payment of fare. There has not

been even inconsistency in testimony of any of the witnesses, therefore, there was no occasion for the Tribunal to give recovery rights to the insurance company. In this regard, he has drawn attention of the Court to para 10 of the claim petition as well as the statement of PW-3 Asloop Khan and PW-9 Manoj Kumar to contend that finding of the Tribunal on the aforementioned issue is liable to be set aside.

Per contra, Mr. Vinod Chaudhri, learned counsel appearing on behalf of the insurance company submits that even assuming the aforementioned evidence to be correct but the cumulative effect of the aforementioned evidence would lead to a conclusion that the jeep was not being run for a charitable or philanthropic purpose i.e. all the way from Manesar to Gurgaon lift was given to the persons sitting in the jeep, thus, an adverse inference is that the vehicle was being run in defiance and breach of terms and conditions of the insurance policy as all the passengers had boarded the jeep on payment of fare is liable to be drawn. This is the best cross-examination which the insurance company could have done to ascertain the truth, therefore, finding arrived at by the Tribunal on the aforementioned issue is perfectly legal and justified and cannot be tinkered with and urges this Court for dismissal of the appeals.

I have heard learned counsel for parties and appraised the paper book. Before advertng to the respective arguments of the parties, it would be apt to reproduce para 10 of the claim petition and also the relevant portion of cross-examination of PW-3 and PW-9 which reads as under:-

10. "Whether the deceased was travelling by the vehicle if so? Give starting station and its destination

Yes the deceased along with other passengers boarded the offending vehicle from Manesar for Gurgaon."

xxxxx of Asloop Khan by Miss Shashi Bala, Advocate for all the respondents.

xxxx

xxxxx

xxxxx

It is wrong to suggest that I have boarded the alleged jeep and paid the fare. It is also wrong to suggest that the deceased had paid the fare to the respondent No.1. Police has recorded my statement. I have not stated to the police that I boarded the jeep because the driver was known to me. It is correct that I have stated to the police that six passengers were already seated in the jeep and we too also boarded the alleged jeep. I do not know whether the six passengers sitting in the jeep were known to respondent No.1. Further I do not know whether they have paid the fare or not. I have not received injuries in the accident except scratches on the hand. I was not medico-legally examined. It is wrong to suggest that the accident had not taken place due to the rash and negligent driving of respondent No.1. It is also wrong to suggest that I have not witnessed the accident. It is also wrong to suggest that I am manipulated witness. The other passengers who were sitting in the jeep received injuries.

*RO&AC
sd/-*

*sd/-
MACT/GGN/13.11.2003.”*

xxxxx of PW-9 Manoj Kumar by all respondents.

In the jeep I along with Parveen was there along with 4-5 persons. I boarded the jeep from Nanu Kalan. It is wrong that on the route where the jeep was plying, the driver has stopped the jeep for passengers. It is wrong that I paid fare to driver of jeep. It is correct that I handed over all the bills to my counsel. It is wrong that I have not spent Rs.70000/-75000/- on my treatment etc. I have brought the D.L used to ply the van of Rajinder Singh r/o Delhi. It is wrong that I am not driver and not earning Rs.4000/- p.m. Police recorded my statement in Pushapanjali hospital Gurgaon. It is correct that Parveen son of Udeyvir lodged the FIR. Respondent No.1 was know to me. I do not remember whether the statement made to the police I got recorded that driver was known to me. It is correct that in the petition I have signed. It is correct that my counsel has narrated and explained each facts to me before signing the petition. It is

wrong that accident had not occurred due to rash and negligent driving of respondent No.1. It is correct that I have not received any disability. It is wrong that I am deposing falsely.

RO&AC
sd/-Manoj Kumar

sd/-
MACT/18.8.04.”

On conjoint reading of the aforementioned pleadings and the cross-examination, none of the witnesses or the pleadings suggest that at any point of time they paid the fare or taken the vehicle on hire or paid travelling expenses to the driver of the jeep, owned by the appellant-owner. The contention of Mr. Chaudhri in the absence of direct and cogent evidence would be only an inference, thus, not able to cut ice. The aforementioned piece of evidence has totally been ignored nor adverted to by the Tribunal, thus, there is illegality and perversity. In view of above, the finding of the Tribunal on issue No.7 is set aside, in essence, rest of the findings on other issues are upheld.

The Award stands modified and the appeals filed by the owner are allowed to the above extent i.e. liability is fastened upon the insurance company. The statutory amount of ₹25000/- deposited in each case, if not, disbursed to the claimants is ordered to be refunded to the appellant, otherwise the appellant is entitled to seek refund of the amount from the insurance company.

(AMIT RAWAL)
JUDGE

August 01, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No