

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 13.11.2017

FAO 3818 of 2009 (O&M)

National Insurance Co. Limited

..... Appellant

Versus

Sandeep Kumar and others

.....Respondents

FAO 3819 of 2009 (O&M)

National Insurance Co. Limited

..... Appellant

Versus

Krishna Devi and others

.....Respondents

FAO 3820 of 2009 (O&M)

National Insurance Co. Limited

..... Appellant

Versus

Manga and others

.....Respondents

FAO 3821 of 2009 (O&M)

National Insurance Co. Limited

..... Appellant

Versus

Kaka and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R C Gupta, Advocate
 for the insurance company
 Mr. Vishal Gupta, Advocate
 for respondents No. 3 and 4 (FAO 3818, 3820 & 3821 of 2009)
 and respondents No. 8 & 9 (FAO No. 3819 of 2009)

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Rekha Mittal, J.

This order will dispose of aforesaid appeals as identical
questions of law and fact are involved for adjudication.

For the sake of convenience, facts are taken from FAO No. 3818 of 2009.

Different applications were filed for grant of compensation in respect of each injury case in addition to an application titled Krishna Devi vs Kuldeep Singh etc. in a death case for grant of compensation pertaining to accident that took place on 31.03.2006 involving truck No. HR 58-5277. The Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari (hereinafter to be referred as 'the Tribunal') awarded compensation in favour of the claimants and Driver, owner and the insurance company of the offending vehicle were held jointly and severally liable to pay compensation.

The insurance company has preferred the appeals to assail the award to the extent, company has been held liable to pay compensation in the light of findings of the Tribunal recorded in para 74 of the award. It has been argued that as the vehicle in question is a goods carrying commercial vehicle insured vide policy Ex R1/A/R2, neither there is any requirement in law to insure the passenger(s) carried in such a vehicle nor there is any special contract between the insured and insurer to cover the risk of death or bodily injury to passenger carried in such a vehicle. It is argued with vehemence that the Tribunal has grossly erred in holding the insurance company liable to pay compensation. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Prema Devi and others***, II (2008) ACC 1 (SC) .

Counsel representing the insured, on the other hand, has supported findings of the Tribunal with regard to liability of the insurance company with the submission that as the insured is not guilty of committing

breach of terms and conditions of contract of insurance in view of the facts elicited in his testimony before the Tribunal, the insurance company cannot escape its liability to pay compensation by indemnification of the insured under the contract of insurance. For this purpose, he has placed reliance upon judgment of this Court ***Rakesh Kumar Arora v Balwant Singh, 2001 (1) R.C.R. (Civil) 107.*** Further reference has been made to Division Bench judgment of the Rajasthan High Court (Jaipur Bench) ***Suresh Oil Mills v Kesar Bai along with connected cases, 2006 ACJ 510.***

I have heard Counsel for the parties, perused the paper book and the records.

Indisputably, the vehicle in question in which the injured and deceased were travelling is a goods carrying commercial vehicle and was insured as such vide policy marked as exhibit. Perusal of findings recorded in para 74 of the award would reveal that the insured pressed into service liability of the company by raising a plea that he never authorized his driver to allow the injured and deceased to be carried in the vehicle in question when otherwise those persons sat in the Truck even without consent of the driver, therefore, the insured is not guilty of committing breach of terms and conditions of contract of insurance in order to exonerate the insurer of its liability to indemnify the insured.

The question of intentional or otherwise breach of the terms and conditions of contract of insurance would arise only if there was a contract/policy covering a particular risk. In the case at hand, the question before the Tribunal was not with regard to violation of the terms and conditions of contract of insurance but the issue was whether the persons

who travelled in the vehicle in question (gratuitous passengers) would be covered under the policy obtained by the insured.

Counsel for the respondents has not disputed that neither the insured was obligated under law to obtain a policy covering risk of death or bodily injury to a passenger carried in goods vehicle nor the policy obtained by the insured covered any such risk by way of special contract between the insured and the insurer.

Hon'ble the Supreme Court of India in Prema Devi's case (supra) has held that there is no provision similar to clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923. There is no reference to any passenger in "goods carriage". The Court in para 7 has taken note of paras 6 to 16 of the judgment in ***New India Assurance Co. Limited v. Vedwati and others, III (2007) SLT 338*** and ultimately concluded in para 8, reads as under:-

"8. Above being the position, the impugned order of the High Court is not sustainable and is set aside. It is open to the claimant to recover the amount awarded from the owners of the offending vehicles."

In the referred authority, stand of the appellant-insurance company was that owner of the goods carrier had not taken any policy for

such passengers and there was no requirement under law for obtaining a policy for passengers.

Hon'ble the Supreme Court of India in *M/s National Insurance Co. Limited v. Baljit Kaur and others, 2004 (1) R.C.R. (Civil) 722* has laid down that the insurance company is not liable to pay compensation in respect of gratuitous passengers travelling in goods vehicle. It has been noticed by the Court that the judgment passed by the Apex Court in *New India Assurance Co v. Satpal Singh, 2000 (1) R.C.R. (Civil) 274* has been reversed in *New India Assurance Co. Limited v. Asha Rani, 2003 (1) R.C.R. (Civil) 671*.

Counsel for respondents has failed to cite any precedent holding contrary to what has been held in *Prema Devi's* case (supra). To be fair to the respondents, counsel has relied upon judgment of this court in *Rakesh Kumar Arora's* case (supra). In the said case, dispute before the Court was with regard to competency of the minor to drive the vehicle and the driver not possessing any licence. The Court dealt with the question as to whether the insured is guilty of committing breach of terms and conditions of policy constituting a valid defence under Section 149 (2) (a) (ii) of the Motor Vehicles Act, 1988.

In the Division Bench judgment of the Rajasthan High Court in *Suresh Oil Mills's* case (supra), the Court in para 11 of the judgment has taken note of the insurance policy (Ex.A-1) and found that additional premium in the sum of Rs.450/- was paid by the vehicle owner which included Rs.150/- to cover unlimited personal injury sustained by third party. India Motor Tariffs Schedule of Premiums provides that the indemnity granted to the insured for the personal injury caused to third party

shall be unlimited, if Rs.150/- as additional premium is paid in respect of Goods Carrying Vehicle. In the peculiar facts of the case, the Rajasthan High Court refused to rely upon judgment of the Apex Court in ***Mallawwa and others v. Oriental Insurance Co and others, 1999 ACJ 1***, wherein their Lordships of the Supreme Court in para 19 has held, quoted thus:-

“19. Being concerned with a beneficial legislation like the one at hand, we would have normally preferred liberal interpretation, but the question is whether without any extra premium having been paid, the owner of a goods vehicle can claim indemnification from the insurer just because once in a year the goods vehicle had carried a passenger for hire or reward along with the goods.”

As in the case at hand, the insured has not paid any special premium to cover injury to a gratuitous passenger travelling in the vehicle in question, he cannot derive any advantage to his contention from the judgment in *Suresh Oil Mills's* case (supra).

In view of the above, it can safely be held that the Tribunal has mis-directed itself and swayed towards the issue of breach of terms and conditions of contract of insurance policy but failed to appreciate that the question before the Tribunal was whether gratuitous passengers in the vehicle in question are covered under the policy issued by the insurance company. As there was no policy issued in favour of the insured to cover the risk of bodily injury or death of gratuitous passenger (s), the insurance company is not liable to indemnify the insured or pay compensation to the claimants. Accordingly, findings of the Tribunal recorded in para 74 of the

award cannot be allowed to sustain and liable to be set aside. Resultantly, the insurance company is exonerated of its liability to pay compensation to the claimants as a measure to indemnify the insured. However, the claimants shall be entitled to recover the compensation from the driver and owner (s) of the vehicle in question.

For the foregoing reasons, the appeals are allowed. The award passed by the Tribunal holding insurance company jointly and severally liable to pay compensation is set aside. Resultantly, the insurance company is not liable to pay compensation to the claimants.

No orders as to costs.

(Rekha Mittal)
Judge

13.11.2017
mohan bimbura

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