

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-61-2009 (O&M)

Date of Decision: 03.08.2017

United India Insurance Company Limited

...Appellant

V/s.

Smt. Sushila Devi and others

...Respondents

AND

FAO-62-2009 (O&M)

United India Insurance Company Limited

...Appellant

V/s.

Smt. Sudesh Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Gopal Mittal, Advocate for the appellant.

Mr. R.S. Mamli, Advocate for the respondents.

AMIT RAWAL, J. (Oral).

By this order, I shall dispose of two appeals i.e. FAO-61-2009 and FAO-62-2009 preferred by United India Insurance Company on account of claim petitions being filed by the LRs of the deceased namely Baldev Singh @ Billu and Pawan Kumar who both while on a Hero Hondo motorcycle bearing registration No. PB-08-6220 driven by Baldev Singh, had met with an accident, with private bus bearing registration No. HR-45/3198 driven by Balbir Singh owned by the Upkar Transport Cooperation Society.

Mr. Gopal Mittal, learned counsel appearing on behalf of the insurance company submits that learned MACT has committed illegality on two points: -

1. It was a case of contributory negligence as motor-cyclist had hit parked bus on the road.

2. The driving license of Balbir Singh was not genuine.

In case, had the aforementioned points, taken into consideration, perhaps it could have a case of contributory negligence much less recovery rights being given to insurance company.

Per contra, Mr. R.S. Mamli, learned counsel appearing on behalf of the respondents submits that insurance company has failed to prove on record evidence regarding the fakeness of the driving license of Balbir Singh. In the absence of evidence, the alleged report cannot be taken into consideration as the insurance company has not been able to succeed in the application seeking appointment of Local Commissioner as said order has been upheld in the civil revision. As regards the contributory negligence, the bus was parked on the middle of the road i.e. neither at any bus stop nor bus stand, therefore the negligence of the bus driver is writ large urging this Court to uphold the MACT award.

I have heard learned counsel for the parties and appraised the paper book and am of the view that there is no force in the submissions of Mr. Gopal Mittal, Advocate, as fakeness of the driving license has not been proved until and unless a direct cogent evidence by discharging the onus under Section 101 of Indian Evidence Act is not resorted to. In the absence of additional evidence, the said plea cannot be accepted and hence declined. As regards contributory negligence, the insurance company has not been able to establish that motor-cyclist had negligently hit the bus which was parked in the middle of the road, as no site plan or any witness has been examined. Even the driver has not appeared into the witness box, nor did the insurance company summon the driver to prove the aforementioned point. Even otherwise, no bus is permitted to park at any time on any road

without there being a provision of local bus stop or bus stand. Insurance company should be very cautious while issuing insurance policy and should endeavor to incorporate the aforementioned condition, the breach of which would absolved insurance company from its liability. In absence of such clause, such plea is rejected.

In view of what has been observed above, findings of the MACT do not call for interference and the appeals are dismissed.

August 03, 2017
Divyanshi

(AMIT RAWAL)
JUDGE

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