IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2666-2011 (O&M)
Date of decision : 10.08.2017

The Oriental Insurance Company Ltd.

... Appellant(s)

Versus

Satpal and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant(s).

None for the respondent(s).

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AMIT RAWAL, J. (ORAL)

The present appeal has been preferred by the appellant-Insurance Company seeking recovery rights.

The case set up in the claim petition before the Motor Accident Claims Tribunal (in short 'the Tribunal') was that on 25.06.2009, the claimant along with Nain Singh (husband of sister of the claimant) was going to his village from Rewari and they boarded Mahindra Max Jeep bearing Registration No.HR-66-5544 from Nai Wali Chowk Rewari for going to Kund. The aforementioned jeep was alleged to have been driven rashly and negligently by Narinder Singh-driver and hit a tree. Due to impact of accident, the claimant sustained the injuries, thus, claims the compensation.

Mr. Sanjiv Pabbi, learned counsel appearing on behalf of the appellant/Insurance Company submits that the Insurance Company had issued an Insurance Package Policy, but from the cross-examination of the claimant/respondent(s), it surfaced that the owner had breached the terms and conditions of the Insurance Policy, as it was being used for commercial purposes.

He further submits that though the Tribunal had observed that the claimant in the examination admitted the factum of payment of fare of ₹ 15/- to the driver, but despite that, did not absolve the Insurance Company from the indemnification. The owner and the driver though have appeared in the witness-box, but did not deny the examination-in-chief of misusing the vehicle. A specific suggestion to both of them in cross-examination was asked, which was denied, thus, the Insurance Company may be granted recovery rights.

There is no representation on behalf of the respondent(s) despite service. This fact is being noticed by this Court from time to time and accordingly, I proceed to decide the appeal.

In order to appreciate the controversy involved in the present case, it would be pertinent to reproduce the statement of PW-3 Satpal, which reads as under:-

> *"I tender in evidence my duly sworn affidavit Ex.PW3/A, which may be read as part of my evidence.*
> *XXX by respondent counsel.*
> *15-20 passenger were travelling in the jeep at the time of accident. I had paid ₹ 15/- as fare. Colour of the offending vehicle is sky blue. One other passenger was also sustained injury in this accident. It is incorrect to suggest that I am alighting of the jeep from outside. It is incorrect to suggest that Max HR 66-5564 was driving at a slow speed. It is incorrect to suggest that accident took place due to my own negligence. It is incorrect to suggest that I was not earning ₹ 6000/- PM prior the accident. I had collected all the medical bill and receipts regarding my treatment and medicines. I have*

not brought any documentary proof to justify my employment and income. It is incorrect to suggest that I am idle person and my earning is nothing. It is incorrect to suggest that I ha d not spent ₹ 1,50,000/- on my treatment medicine, transport etc. It is incorrect to suggest that I am deposing falsely."

Despite the aforementioned witness having stated to have paid a sum of ₹ 15/- as a fare, the driver and the owner did not come forward to cross-examine the aforementioned witness on aforementioned lines. On the contrary, Vikram Singh/respondent No.3, in cross-examination, admitted that he had purchased the aforementioned jeep for his personal use and denied the suggestion that the same was used for fare paying passenger, but also did not deny the fact that he was not travelling in the vehicle at the time of accident. The cross-examination of the RW-1 Vikram Singh, owner reads as under:-

"I am an agriculturist. I cannot tell about the khewat, Khatoni and rectange number of our land. I cannot tell khewat, khatoni and rectange number of the land belonging to the claimant. I have purchased the Max vehicle for my personal use. I used my vehicle for agricultural use also and for going to our relations. It is incorrect that I was using the vehicle on hire basis. On 25.06.2009 petitioner was accompanied by his relative r/o Nehchana. I cannot tell the name of the relative of the petitioner. It is incorrect that the petitioner was travelling as a fare paying passenger on 25.06.2009. On that day, I was also in my vehicle from Rewari to the place of occurrence. I cannot tell the name of the sisters of the petitioner. He is having two sisters. I also cannot tell the name of the mother of the petitioner. The father's name of the petitioner is Makhan Singh. Police never visited the spot in my presence. No such statement of mine was recorded by the police. A school is

situated near the place of accident. It is incorrect that I was not travelling in my vehicle at the time of the accident. I cannot tell who had lodged the complaint regarding this accident before the police. It is incorrect that the petitioner and other passengers were traveling in the Max vehicle as fare paying passengers. The claimant was firstly taken to Din Dayal Hospital at Kund and thereafter, he was taken to Pooja Hospital at Narnual and thereafter, he was taken to GH, Narnaul and lastly he was taken to Kailash Hospital, Narnaul. I remained with him upto 29.06.2009. Police did not come in Kailash Hospital in my presence. It is incorrect that I am deposing falsely to escape my liability."

The cumulative effect of the aforementioned evidence brought on record reveals that there had been a breach of the terms and conditions of the Insurance Policy, which was insured for the purpose of private vehicle for carrying the passengers 9+1 i.e. 9 passengers & 1 Driver). It also revealed that there were about 15-20 passengers in the vehicle. All these factors lead to an irresistible conclusion that the vehicle was being plied in defiance to the terms and conditions of the Insurance Policy, therefore, question of indemnification actually arose, thus, the findings of the Tribunal on this point are liable to be set aside/modified. As an upshot of my aforementioned observations read with the evidence, I allow the appeal of the appellant/Insurance Company by giving them the recovery rights from the owner.

Resultantly, the appeal stands allowed.

(AMIT RAWAL)
JUDGE

10.08.2017
Yogesh Sharma

Whether speaking/reasoned **Yes**

Whether Reportable **No**