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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-421-2011

Date of decision : 22.11.2017

United India Insurance Company Ltd.

... Appellant(s)

Versus

Biro and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant.

Mr. Rajiv Dev Sharma, Advocate
for respondent Nos.1 and 2.

Mr. B.S. Baath, Advocate
for respondent Nos.3 and 4.

AMIT RAWAL, J.

The appellant-Insurance Company is in an appeal against the award dated 20.10.2010 of the Motor Accident Claims Tribunal, Gurdaspur (in short 'the Tribunal'), whereby the compensation to the tune of ₹ 2,08,000/- along with interest @ 9% per annum, has been awarded, on account of death of Jasbir Masih in a vehicular accident occurred on 30.01.2007.

Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of the appellant-Insurance Company submits that Tata Sumo bearing Registration No.PB-02-AN-6269 insured with it, was driven as Taxi, whereas it was insured for private purpose and therefore, there was a breach of the terms and conditions of the Insurance Policy, yet the liability to pay

the compensation has been fastened upon it. He has drawn the attention of this Court to para No.24 of the claim petition, wherein there was an admission that they were travelling in Tata Sumo, aforementioned, which had been taken on hire basis and therefore, such admission itself is a clincher for exonerating the Insurance Company. Even specific objection, in this regard, had been taken in the written statement. He further submits that the occupants of the vehicle were, thus, not covered being an 'act policy'.

Mr. Rajiv Dev Sharma and Mr. B.S. Baath, learned counsel appearing on behalf of respondent Nos.1 & 2 and 3 & 4, respectively, submitted that the Insurance Company has failed to prove the factum of discharging the onus of breach of the terms and conditions of the policy i.e. as to whether such a breach had actually led to the accident, as no suggestion had been put to the eye-witness of having taken a ride in a vehicle on hire basis. There is no admission of any of the witnesses that they had paid the fare to the owner or the driver of the vehicle while taking a ride, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Gupta, for, the examination-in-chief of AW-2 Bira Masih, who was also travelling in the aforementioned Tata Sumo, clearly reveals that driver had lost the control over the Tata Sumo driven by him, due to sharp lights of another vehicle coming from the opposite side, as a result of which it directly struck into tree on the side of the road and therefore, the deceased along with another travellers sustained serious multiple injuries and also succumbed to the same. He was extensively cross-

examined, but the Insurance Company failed to ask any question with regard to the fact that he was also travelling in Sumo on hire basis. The aforementioned cross-examination in vernacular was read out to Mr. Vikas Mohan Gupta, by the counsel for the owner and the driver along with him, in open Court which have not been controverted, therefore, arguments, aforementioned, with regard to the breach of the terms and conditions of the policy cannot be allowed to be sustained. There is another aspect of the matter that the offending vehicle was registered for private purposes, even Baljeet Singh, driver of the Tata Sumo, had appeared, but no question of having taken the vehicle on hire basis was ever put. In the absence of direct and cogent evidence, I am of the view that the plea of the Insurance Company qua breach of the terms and conditions of the insurance policy is not tenable and therefore, the same is hereby rejected.

As an upshot of my observations, the findings of the learned Tribunal cannot be faulted with. No ground is made out for interference and resultantly, the appeal is dismissed.

22.11.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No
✓
Whether Reportable Yes/ No