In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 6208 of 2012 (O&M)
Date of Decision: 19.7.2017

United India Insurance Co. Limited ......Appellant

Versus

Mohd. Illiyas and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Pardeep Goyal, Advocate
for the appellant.

Mr. Arvind Yadav, Advocate
for respondents No. 1 and 2.

Mr. Ashish Gupta, Advocate
for respondents No. 3 to 9.

****

ANITA CHAUDHRY, J

This appeal is by the insurance company seeking recovery rights as the vehicle was insured as a private vehicle but was used as a transport vehicle at the time of the accident.

The accident occurred on 31.12.2007. Deceased Jaikam along with other passengers were travelling in a jeep driven by respondent No. 2 from Badkali Chowk to Doha. Due to high speed, respondent No. 2 could not control his jeep and turned turtle.

The owner failed to appear and was proceeded *ex parte*. The driver denied the accident and pleaded that a false case had been registered. The insurance company took the plea that the vehicle was being used as commercial vehicle as 10-15 passengers were travelling in the jeep on hire at the time of the accident and there was violation of terms and conditions of the insurance policy.

The Tribunal held respondent No. 2 liable for the accident and calculated the compensation to Rs. 9,24,000/- to be paid by insurance company. With respect to the defence raised by the insurance company the Tribunal held that respondent No. 2 was having a learner's licence and relying upon ***National Insurance Co. Ltd. versus Swaran Singh 2004 ACJ*, *1*** held that the driver was entitled to drive the vehicle and he had a valid licence.

The submission on behalf of the appellant is that the recovery rights should have been granted to them as the driver had a learner's licence and he could not ply a jeep for hire and the jeep was carrying more passengers than what was permitted and there was a breach of the policy terms and they were entitled to recover the amount from the driver.

The submission on the other hand is that simply because the licence was a learner's licence, the liability cannot be shifted and the Apex Court has dealt with the issue in *Swaran Singh's* case (supra) and the insurer cannot take it as a defence to avoid its liability.

It is necessary to first notice the facts referred to in the complaint lodged with the police. The complainant had mentioned that he had gone to attend a wedding at Nuh and was returning and was at Badkali Chowk and was to go to his village when he boarded a jeep which already had 10-15 passengers. He boarded the jeep which was overloaded because he was in hurry and wanted to reach home and then he narrated the manner in which the accident had occurred. The police had taken the driving licence into their possession as well as the registration certificate. The licence in favour of the driver was a learner's licence which had been issued on 4.9.2007 and was valid upto 3.3.2008. The seating capacity of the jeep was

9+1. The complainant had mentioned that the jeep was overloaded as there were already 10-15 occupants. The driver had learner's licence which did not entitle him to ply a jeep for hire and there was a breach of the policy conditions. The Tribunal had gone wrong in not allowing recovery rights to the insurance company. No doubt the learner's licence is a licence within the provisions of the Act but there are conditions in the policy which had been violated, therefore, the insurance company is entitled to recovery rights.

The appeal is allowed and the recovery rights are granted to the insurance company.

(ANITA CHAUDHRY)
JUDGE

July 19, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No