IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3743 of 2013 (O&M)
Date of Decision: - 22.08.2017

New India Assurance Co. Ltd.

........Appellant

Vs.

Gurjeet Kaur and others

........Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vinod Gupta, Advocate,
for the appellant.

Mr. Sham Lal Bhalla, Advocate,
for respondents No.6 and 7.

*****

RITU BAHRI, J. (ORAL)

Appellant-Insurance Company has come up in appeal against the Award dated 15.03.2013, passed by the Motor Accident Claims Tribunal, Patiala, whereby the claim petition of the claimant was allowed and compensation of ₹21,22,000/- along with interest @7.5% interest per annum from the date of claim petition i.e. 02.08.2011 till its realization has been allowed.

Brief facts of the case are that on 23.06.2011, deceased was coming on his motorcycle bearing registration No.PB-34-5730 whereas his brother Rupinder Singh @ Pretty was following him on a separate motorcycle. At about 4:50 p.m. when he reached near village New-1 Rakhra on Nabha-Patiala road, then a passenger bus bearing registration No.PB-13-X-8663, which was being driven by Manjit Singh-respondent No.1 in a rash and negligent manner and he struck the bus against the motorcycle driven by deceased by moving the bus from wrong side and the bus dragged the deceased to some distance and Gurinder Singh-deceased fell down on the left side of the road. The offending bus stopped after moving much distance. The deceased suffered multiple bodily injuries on the head and other vital parts of his body. The motorcycle was totally damaged. The deceased was brought to Rajindra Hospital, Patiala in a car from where he was referred to Military Hospital, Patiala after giving first aid. Unfortunately, the deceased died on 26.06.2011 in the army hospital and thereafter the deceased was again taken to Rajinder Hospital, Patiala for post-mortem examination. According to the claimants, the accident had taken place due to a rash and negligent driving of Bus.

On notice, respondents No.5 and 6 i.e. Manjeet Singh and Malwinder Singh (Driver and Owner of Bus No.PB-13-X-8663 respectively) have appeared and they have filed a joint written statement. Respondent No.7 i.e. Simranjit Kaur (Owner of Bus No.PB-13-X-8663) had filed a separate written statement denying the averments of the claim petition. It was further averred that at the time of relevant incident, the bus was insured with New India Assurance Company from the period from 26.11.2010 to 25.11.2011. Respondent No.3-PRTC had filed separate written statement making the preliminary objections that the claim petition was not maintainable. On merits, all the averments of the claim petition have been denied. Respondent-Insurance Company had filed separate written statement taking the preliminary objections that the driver of bus bearing No.PB-13-X-8663 was not having a valid and effective driving licence and was being plied without valid route permit. Thereafter, from the pleading of the parties, the following issues were framed: -

> "1. Whether L/NK Gurinder Singh son of Basant Singh No15345113A died in an accident caused by respondent No.1 while driving bus bearing registration No.PB-13-X-8663 at about 4:30 p.m. near new Rakhra Nabha Patiala road District Patiala rashly and negligently on 23.06.2011 as alleged ? OPP
> 2. Whether the claimants are entitled to compensation, if so to what amount from whom? OPP.
> 3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so its effect? OPR
> 4. Relief."

The factum of incident was duly proved by placing on record copy of FIR Ex.PW1/19, inquest report Ex.PW1/21, copy of intimation regarding death of Sandeep Singh in the hospital, which was entered at Sr.No.16 dated 26.06.2011 Ex.PW1/22.

Manjit Singh had appeared as RW-1, who was produced by the Insurance Company. He testified that he was facing trial in the Court of Additional Chief Judicial Magistrate, Patiala qua this accident. He further testified that the accident had taken place with the motorcycle due to the negligence of the driver of the motorcycle and at that time the speed of the bus was 60/70 kmph. However, in his cross-examination, he had stated that although the motorcycle was coming on its left side but while came near the bus, it turned towards right side and hit the bus. He had further admitted in his cross-examination that bus was running at the speed of 60/70 kmph and road was of double width and two vehicles can easily cross simultaneously. Respondent-Manjit Singh had further admitted that he was going from Patiala to Nabha whereas the motorcycle was coming from opposite side.

After hearing counsel for the parties and going through the evidence on record, Manjit Singh was held liable for negligence driving and issue No.1 was decided in favour of complainants. The deceased was employee of Indian Army. The compensation has been taken into account by the Tribunal, which is as follows:-

Sr. No	***Heads***	***Amount Granted***
(i)	Salary	₹22,000/- x 12 = ₹2,64,000/-
(ii)	Deduction 1/3rd on personal expenses	₹2,64,000 – ₹88,000 = ₹1,76,000
(iii)	Compensation after multiplier of 12 is applied	₹1,76,000/- x 12 = ₹21,12,000/-
(iv)	Funeral Expenses	₹5,000/-
(v)	Loss consortium	₹5,000/-

The Tribunal has examined the liability of payment of this compensation. Manjit Singh-Respondent No.5 herein was the driver, respondent No.7 was the owner whereas the appellant was the insurer of the offending bus. As such, respondent Nos.5, 7 and appellant herein were jointly and severally liable to pay the compensation amount to the claimants. Respondent Nos.5 and 7 have placed on record the lease agreement Ex.R-1 vide which three buses have been leased out by Simerjeet Kaur-owner of the buses to Pepsu Road Transport Corporation through its Managing Director under kilometer scheme. The buses were being run under proper route permit and agreement Ex.R1. The agreement has been executed on 22.11.2010. The insurance policy was effected on 26.11.2010. Moreover, Manjit Singh was holding valid driving licence at the time of incident which was verified by the Tribunal. Hence, the Insurance Company cannot be absolved from its responsibility and issue No.3 was decided against the Insurance Company.

Learned counsel for the Insurance Company has referred to a judgment passed by the Hon'ble Supreme Court in **Civil Appeal No.5293-2010** titled **Managing Director, K.S.R.T.C.** Vs. **New India Assurance Co. Ltd. and another**, **decided on 27.10.2015**, whereby the Supreme Court has considered the case where the bus had been taken on lease by the Karnataka State Road Transport Corporation (KSRTC) from the original owners T.M. Ganeshan. The bus was insured by the New India Assurance Co. Ltd. The Supreme Court had given directions to the KSRTC to make the payment of compensation and thereafter to recover the same from the owners as stipulated in the agreement or from the insurer.

The above-said judgment by the Supreme Court cannot be applied in favour of the appellant-Insurance Company as in this case the buses owned by the original owner had been taken on lease by the KSRTC by an agreement dated 28.02.2002. As per the agreement, the liability was fastened upon the owner and the insurer of the vehicle jointly and severally to make payment of compensation. The MACT, Tumkur, Karnataka had allowed a claim and awarded a sum of ₹4,09,000/- along with interest @ 6% p.a and the liability was fastened upon the owner and the insurer of the vehicle jointly and severally to make the payment of compensation. Thereafter, the High Court allowed the appeal filed by the insurer and held that the liability to make the payment of compensation of the KSRTC alone. On an appeal filed by the insurer before the Supreme Court, it was held that insurer could not escape the liability to make the payment of compensation when the ownership changes due to hypothecation agreement. In the case of hire also, it cannot escape the liability, even if the ownership changes.

As per judgment in **HDFC Bank Limited** Vs. **Reshma & Ors.**, **2015(3) SCC 6879**, the KSRTC was to be treated as owner under Section 2(30) of the Act of 1988 and the registered owner continues to remain liable as per terms and conditions of lease deed. The registered owner and the insurer as well as the Corporation were held to make the payment of compensation jointly and severally. The appeal of the Corporation was allowed and they were given right to recover the amount from the owner as well from the insurer.

Similar issue has came up for consideration before the Supreme Court in case **Uttar Pradesh State Road Transport Corporation** Vs. **Kulsum & Ors.**, **(2011) 8 SCC 142**, where the Supreme Court has considered the question of vehicle given on hire by owner of the vehicle to Uttar Pradesh State Road Transport Corporation (UPSRTC) with its existing and running insurance policy. It was held that the UPSRTC have become the owner of the vehicle during the specified period and vehicle having been insured at the instance of the original owner, it would be deemed that vehicle was transferred along with insurance policy to UPSRTC. The insurer cannot escape the liability to pay the compensation. The appeal preferred by UPSRTC was allowed.

Applying the ratio of the above-said judgments given by the Hon'ble Supreme Court in **Managing Director, K.S.R.T.C'; HDFC Bank Limited** and **Uttar Pradesh State Road Transport Corporation (supra)** to the facts of the present case, there is no merit in the present appeal and accordingly the same is hereby dismissed.

(RITU BAHRI)
JUDGE

August 22, 2017
anil/naresh.k

Whether speaking/reasoned	Yes
Whether reportable	No