IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3409 of 2014 (O&M)
Date of Decision: May 02, 2017

Royal Sundaram Alliance Insurance Co. Ltd.

..Appellant(s)

Versus

Kamlesh and others

..Respondent(s)

with

FAO No. 3413 of 2014 (O&M)

Royal Sundaram Alliance Insurance Co. Ltd.

..Appellant(s)

Versus

Saroj and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. D.K. Prajapati, Advocate
for the appellant(s).

Mr. B.S. Tewatia, Advocate
for respondent nos.5 & 6 (in FAO-3409-2014) and
for respondent nos.6 & 7 (in FAO-3413-2014).

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ANITA CHAUDHRY, J.

CM No.10516-CII of 2014
CM No.10526-CII of 2014

For the reasons set out in the applications, same are allowed as prayed for and delay of 8 days in re-filing the appeals is condoned.

Main cases:-

These are two appeals preferred by the insurance company disputing the liability placed upon them by the Motor Accidents Claim Tribunal, Palwal vide award dated 02.01.2014.

Notice was given to respondents no.5 & 6 the owner and driver only.

Two claim petitions were filed for the death of Gajender Singh and Tula Ram. The facts as revealed are that Jhamman and Ganender Singh had boarded a truck bearing registration no. HR38P-7728. The truck was driven by Rohtash. It is claimed that Tula Ram was the second driver. After crossing Agra City, the driver started driving the vehicle at a high speed and failed to pay heed to the request made by the passengers. Jhamman and Gajender wanted to be dropped at Toll Tax, Shikohabad. The truck hit a vehicle parked on ITI Chowk, Itawa at 6:00 AM on 27.11.2009. Tula Ram and Gajender died on the spot. Respondent no.1 fled leaving the vehicle behind. Jhamman was badly shaken and did not go to the police station and went to attend to the last rites. He made the statement to the police on 07.12.2009. A case was registered against respondent no.1.

Respondent no.1 & 2 filed the written statement denying the accident. It was pleaded that no accident had taken place with the vehicle and in case it was found then the compensation was to be paid by the insurance company.

The insurance company took the plea that there was delay in lodging the FIR and the deceased were travelling as gratuitous passengers and they were not liable to pay any compensation.

The Tribunal found the negligence of the driver and rejected the submission made by the insurance company and they were held liable to pay the compensation. It would be relevant to refer to para no. 19 of the award passed by the Tribunal, which read as under:-

> *"19. After giving my thoughtful consideration to the submissions so made by learned counsels for both the sides, I find the contention of learned counsel for the respondent no.3 completely devoid of any merit, because as per its own document i.e. cover note Ex.R-1, three persons including driver were authorized to travel in the offending vehicle. Both the deceased were not travelling on payment of any fare. Hence, by any stretch of imagination, they cannot be termed as gratuitous passengers or an unauthorized occupants, more particularly, when as per cover note Ex.R-1, two persons of any category not specified can travel in it."*

The submission on behalf of the appellant-insurance company is that in the written statement filed by respondent nos.1 & 2 there was no plea that Tula Ram was the second driver and the accident was denied and the owner did not step into the witness box to say that Tula Ram was the second driver and the Court on the statement of the claimants gave a finding that Tula Ram was the second driver. It was urged that the premium paid was for the driver/cleaner/coolie and not for gratuitous passengers and the driver admitted that Gajender Singh was working at the Toll Tax and had taken a lift from Hassanpur Chowk. It was urged that the burden was upon the owner-driver and the statement of Rohtash RW-1 has to be rejected with respect to the claim regarding Tula Ram as he had stated that the salary was never paid to Tula Ram in his presence nor he knew the salary drawn by him. It was urged that both these persons were gratuitous passengers and could not travel and there was violation of the policy. Reliance was placed upon ***Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy 2003(2) SCC 339*** and ***M/s. National Insurance Co. Ltd. Vs. Baljit Kaur and others 2004(2) SCC 1***.

The submission on the other hand was that the onus was upon the insurance company and had led no evidence to show that the deceased were gratuitous passengers and the Tribunal had rightly rejected that plea.

Section 147 of the Motor Vehicle Act, 1988 was amended in 1994 and it reads as under:-

> *"**147. Requirements of policies and limits of liability** – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -*
> *(a)*
> *(b) insures the persons or classes of persons specified in the policy to extent specified in sub-section(2)-*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;*
> *(ii) ***" (emphasis added)"*

The words “any person” used in Section 147 would not cover a gratuitous passenger and only the owner of the goods and his authorised representative can be carried in the vehicle and would not cover a passenger carried in a goods vehicle whether for hire or reward or otherwise. Prior to the 1994 amendment the words “any person” could be held not to include the owner of the goods or his authorised representative travelling in the goods vehicle but the Parliament has now made it clear that such a construction is no longer possible. In view of 1994 Amendment it would only cover a third party as also the owner of the goods or his authorised representative and not any other person either for hire, for reward or gratuitous passengers. The legislature had no intention to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers. No additional premium was paid for this category of people and the effect would be that the insurance company would not be liable.

No evidence was led by the owner. He was the only person who could say that Tula Ram was his employee. The driver did step into the witness box and deposed that Gajender had taken a lift upto the Toll Tax. With respect to Tula Ram he did say that he was the second driver but he could not give any other details and it appears that this part of the statement has to be rejected and it is held that both the persons were gratuitous passengers and the inevitable conclusion is that the provisions of the Act do not enjoin any statutory liability on the owner to get a vehicle insured for any passenger travelling in goods vehicle and the insurer would have no liability thereof. No extra premium was paid for carrying extra passengers, therefore, recovery rights are given to the insurance company to first pay the amount and then recover the same from the owner-driver.

Both the appeals are allowed.

(ANITA CHAUDHRY)
JUDGE

May 02, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No