IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4909 of 2016 (O&M)
Date of Decision: 05.07.2017

Gurtej Singh ....Appellant

Vs.

National Insurance Co. and ors. ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ramneek Vasudeva, Advocate, for the appellant.

Mr.Rajiv Sharma, Advocate, for respondent/Insurance Company.

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RITU BAHRI, J. (ORAL)

CM No.16788-CII of 2016

For the reasons stated in the application, delay of 41 days in re-filing the appeal is condoned.

Application stands disposed of.

FAO No.4909 of 2016

The present appeal has been filed by Gurtej Singh i.e. owner of vehicle against the Award of the learned Tribunal dated 16.03.2016 whereby, on account of death of Dharminder Kumar, compensation of Rs.5.5 Lacs has been awarded and owner of the vehicle was held liable to make the payment of compensation.

The facts of the accident is not disputed between the parties. The only dispute with regard to the liability of the appellant i.e. owner of the vehicle was fixed to pay compensation to the respondents No.2 to 4/claimants. The learned Tribunal has held that the offending vehicle i.e. Tata Ace bearing registration No.HR-64-7561 was insured as goods careers

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but the offending vehicle was not being used for carrying goods and appellant was carrying 15 passengers/devotees which was in violation of the insurance policy. Secondly, it was being plied without route permit in the area of Punjab which was admitted by the appellant in his cross-examination, the appellant was held liable to pay compensation by the learned Tribunal. However, the accident has taken place due to rash and negligent driving of the offending vehicle which was driven by appellant-Gurtej Singh in a very high speed. It has been further alleged that the driver of the offending vehicle came towards the wrong side while over taking some other vehicle and had struck with the deceased as result of which, the deceased had fallen on the road and died at the spot.

The learned Tribunal after going through the evidence came to the conclusion that the accident took place due to rash and negligent driving of appellant-Gurtej Singh.

At this stage learned counsel for the appellant has made a reference of Division Bench judgment of this Court in case of Oriental Insurance Company Ltd. Vs. Chinder Kaur 1996(2) PLR 749 wherein, the Insurance Company has come in appeal against the Award of the learned Tribunal, simply on the ground that Insurance Company cannot be made liable to make compensation to the legal heirs of the deceased as the offending vehicle insured was carrying passengers which was against the insurance policy. The relevant para is read as under:-

> *In the present case before us, the driver might have caused the breach of condition of policy by carrying passengers in the truck. However, the person for whose death the claim was made by the claimants/respondents was not the passenger in the truck. There was no nexus*

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> *between the breach of condition of policy and the accident and also there was no nexus between the breach of policy and third party which died because of the accident. Therefore, the defence available to the Insurance Company cannot be stretched to the extent of saying that inspite of the fact that there being no nexus as above, the third party cannot claim amount from the Insurance Company. On the contrary, it will be absurd to hold* so. *There- fore, the appeal deserves to be dismissed.*

Learned counsel for the appellant has further made a reference of the Co-ordinate Bench judgment of this Court in case of Jai Maa Banbhori Sewa Mandal (Registered) Tohana and another Vs. Gopi Ram @ Moji Ram and others, wherein, it has been stated that offending vehicle was not required to carry route permit. Sub-Section 3 of Section 66 of Motor Vehicles Act, 1988, says that provision of sub-Section (1) of Section 66 of the Act shall not apply to the transport vehicle as mentioned under clauses (a) to (p) of sub-Section (3) provides that provision of sub-section (1) shall not apply to any goods vehicle, the gross vehicle weight of which does not exceed 3000 Kg. Whereas, the appellant was carrying 15-16 passengers and as per registration certificate of the vehicle in question, the the unladen weight of the tractor is 2000 Kgs. Hence, appellant/driver is not required for route permit as per aforesaid Act and he cannot be liable to pay compensation to the claimant.

In view of the discussed above, owner of the vehicle i.e. appellant is not required to have route permit and also there was no nexus between the breach of condition of policy and also the accident where third party has died, insurance company cannot be absolved to pay compensation to the claimant. The appeal is allowed and respondent-Insurance Company

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is directed to pay compensation to the claimants as per condition mentioned by the learned Tribunal.

Registry is directed to release Rs.25,000/- in favour of appellant which was deposited by the appellant with the Registry of this Court at the time of filing of present appeal.

(RITU BAHRI)
JUDGE

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Whether speaking/reasoned	*Yes/No*
Whether reportable	*Yes/No*

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