IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 775 of 2015 (O&M)
Date of Decision: December 14, 2017

Bajaj Allianz General Insurance Co. Ltd.

...Appellant

Versus

Kailash Devi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Akash Sridhar, Advocate
Mr. Ashwani Talwar, Advocate
for the appellant.

Respondents no.1 & 6 already ex parte.

None for respondent nos.2 to 5.

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ANITA CHAUDHRY, J.

This appeal is by the insurance company seeking recovery rights.

Nepal @ Mainpal had died in an accident which occurred on 24.07.2009. His legal representatives filed a claim petition under Section 166 of the Motor Vehicle Act. The case set up by the claimants was that the deceased was sitting on the mudguard of the tractor with a friend by his side. The tractor was driven by respondent no.5 and when it was near village Dariyapur, it turned turtle leading to the death of Nepal.

The insurance company took the plea that the tractor was attached with a trolley and the deceased was a gratuitous passenger and the company could not be made liable to indemnify the injured and the driver did not have a valid and effective licence to drive the transport vehicle.

The Tribunal calculated the compensation of Rs.7,40,000/- and on the issue with respect to the licence, it observed that the driver had a licence to drive a LMV. After discussing the evidence, no clear finding on the plea set up by the insurance company was given and the liability of payment of compensation was placed upon all the respondents.

I have heard the counsel for the appellant and respondents, who had made his submissions on 07.11.2017.

The submission on behalf of the appellant was that since the victim was sitting on the mudguard of the tractor and the vehicle was carrying gratuitous passengers, therefore, the insurance company was not liable to pay compensation. Reliance was placed upon ***Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors. 2017(2) RCR (Civil) 108*** and ***United India Insurance Company Ltd. Vs. Surinder and others 2004(4) RCR (Civil) 211***.

The submission on the other hand was that the tractor includes any equipment including a trolley and it would be covered under the insurance policy and the insurance company had to prove that he was a gratuitous passenger in the insured vehicle and they could not be exonerated. Reliance was placed upon ***United India Insurance Company Ltd. Vs. Surinder and others***.

I have gone through the authorities cited by the parties.

The judgment referred to by the respondent is not applicable as it considers some other aspects. In similar circumstances, the Apex Court in ***Manuara Khatun's*** case (supra) had noted that the vehicle was carrying gratuitous passengers and it had directed the insurance company to pay the compensation and recover the same from the owner of the vehicle in execution proceedings. Para 16 is relevant and reads as under:-

> 16)*This question also fell for consideration recently in Manager, National Insurance Company Limited vs. Saju P. Paul & Anr., (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".*

The deceased was sitting on the mudguard of the tractor and was a gratuitous passenger. The tractor is not a vehicle to carry passengers, therefore, insurance company was entitled to recovery rights. The finding recorded by the Tribunal is set aside and recovery rights are granted to the insurance company.

The appeal is allowed and the insurance company would recover the amount from the owner-driver.

(ANITA CHAUDHRY)
JUDGE

December 14, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No