IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 601 of 2008 (O&M)
Date of Decision : 30.04.2018

New India Assurance Company Ltd. ....Appellant

Versus

Jasbir Kaur and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Paul S. Saini, Advocate
for the appellant.

None for respondents.

Surinder Gupta, J.

This is appeal by New India Assurance Company Ltd. against award dated 18.10.2007 passed by Motor Accident Claims Tribunal, Panchkula (later referred to as 'the Tribunal') whereby appellant-Insurance Company was held liable to pay amount of compensation for death of Malkit Singh (later referred to as 'the deceased'), in a motor vehicle accident on 30.09.2005 with tractor bearing registration no. HR-49-A-1221 (later referred to as 'the offending vehicle').

2. As the only question involves in this appeal is with regard to fixation of liability to pay amount of compensation, detailed facts of the case are being skipped for sake of brevity.

3. Learned counsel for the appellant has argued that deceased at the time of accident was sitting on mudguard of the offending vehicle, which is not a passenger vehicle. By allowing a third person to travel on mudguard of the tractor, insured had indulged in unauthorized act, which was not in accordance with terms of insurance policy, as such, no liability of appellant to pay the amount of compensation is made out in this case. He has relied on observations of a coordinate Bench of this Court in case of ***United India***

***Insurance Co. Ltd., Regional Office, SCO No. 123-124, Sector 17-B, Chandigarh through duly constituted attorney* vs. *Ramji Lal and others*, 2010 (4) PLR 436** and ***The Oriental Insurance Company Ltd.* vs. *Ishwanti and others*, 2012 (3) PLR 840**.

4. Learned counsel for the appellant has further argued that award is of 2007 and it is quite possible that amount in the absence of any interim order staying payment of the same had been made to claimants, as such, appellant may be allowed right to recover amount of compensation paid to claimants. In case of ***Susheelabai and others* vs. *Basavaraj and another*, 2009 (17) SCC 663,** Hon'ble Apex Court has observed as follows:-

> *"…….Furthermore, in any event, the tractor being a vehicle with one seat, nobody else apart from the driver thereof could travel in the tractor. This aspect of the matter has been considered recently by this Court in* ***Dhanraj* vs. *New India Assurance Co. Ltd.*, (2004) 8 SCC 533"**

5. A coordinate Bench of this Court in para 9 of the judgment in case of ***Ishwanti (supra)*** has observed as follows:-

> *"9. As per the case of the claimants the deceased Amarjeet was traveling on a tractor with his brother Manjeet. While Manjeet was driving the tractor, Amarjeet was sitting on the mudguard of the tractor. Manjeet was working in the muddy fields. All of a sudden the rear wheel of the tractor got struck in the mud and the front portion of the tractor went up in the air and suddenly fell down. Due to the result and jolt, Amarjeet sitting on the mudguard fell on the ground and sustained grievous injuries on his abdomen and succumbed to his injuries. There is force in the submissions of the learned counsel for the Insurance Company that the seating capacity of the tractor was one and there is breach of the terms and conditions of the policy. The deceased was sitting on the tractor on his own*

risk. The tractor was insured for the driver and not for any other person/passenger, as the premium paid was for the driver only. A perusal of Exh.R-2, photocopy of registration of tractor shows that seating capacity of tractor is for one person i.e. driver. It is, therefore, plain logic that when the seating capacity of a tractor is for one person i.e. driver, the other person sitting on it, is not covered under the insurance policy. There is breach of the terms and conditions of the policy. The Ld. Tribunal erroneously held that the amount of compensation be paid by all the respondents jointly and severally. The Insurance company should not be made liable for an occurrence, which takes place on a vehicle not meant for passengers."

6. In case of ***Ramji Lal (supra)***, another coordinate Bench of this Court has observed as follows:-

"IV. A person travelling on mud guard is an unauthorized person :-

4. The Rules of Road Regulations of 1989 sets out under Rule 28 the following:-

"28. Driving of tractors and goods vehicles.- A driver when driving a tractor shall not carry or allow any person to be carried on the tractor. A driver of goods carriage shall not carry in the driver's cabin more number of persons than that is mentioned in the registration certificate and shall not carry passengers for hire or reward."

This rule makes a distinction between a driver driving a tractor and a driver of goods carriage which has a cabin. If it is a goods carriage, there could be a person other than the driver in a driver's cabin whose permitted number shall be prescribed in the registration certificate itself. If it is a tractor, there is no need of a reference even to the registration certificate. The workman carried in a goods carriage or a driver of any vehicle,

> *who is a workman, shall always be entitled to an insurance cover. There is no compulsory insurance for a person other than the driver to travel in a tractor. We have already seen the tractor by itself is not a goods carriage and the compulsory insurance cover is only for a workman carried in a goods carriage or a driver, who is a workman. If therefore, a person is travelling on the tractor, who is not a driver but an unauthorized passenger, there was no need for compulsory insurance."*

7. In view of above settled law, it is evident that owner of the offending vehicle while taking unauthorized person on the tractor violated terms of insurance policy and the Insurance Company was not liable to pay amount of compensation. Consequently, award passed by the Tribunal is modified to the extent that insurer of the offending vehicle i.e. appellant may recover amount of compensation so paid to claimants in this case.

8. This appeal has merit and is accepted to above extent.

April 30, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

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