

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 4750 of 2010 (O&M)

Date of Decision: August 09, 2018

Rakesh

...Appellant

Versus

Rakesh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Mani Ram Verma, Advocate
for the appellant.

Mr.R.C.Kapoor, Advocate
for respondent No.3 – Insurer.

HARINDER SINGH SIDHU, J.

This appeal has been filed by the claimant for enhancement of compensation, as awarded by the Motor Accident Claims Tribunal, Bhiwani (for short 'the Tribunal') vide its award dated 5.4.2010.

Brief facts as disclosed in the claim petition are that on 10.01.2008 in the area of Dadri road near Anand Brothers Petrol Pump, Bhiwani a vehicular accident took place due to the rash and negligent driving of the Tata 407 bearing registration No.HR-39A-3110 (herein for short 'the offending vehicle'), by respondent No.1. Appellant-Rakesh along with Suraj and Anil had hired the offending vehicle from Bhiwani in order to purchase sugarcane from Mohindergarh Mandi. As the offending vehicle reached near Anand Brothers Petrol Pump, Respondent No.1 lost control of the vehicle and it turned turtle. All the persons travelling in the vehicle suffered injuries due to this and they were shifted to G.H Bhiwani for treatment. From there the Appellant was referred to PGIMS Rohtak where he remained admitted

from 11.1.2008 to 14.1.2008. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition having been filed by the Appellant, the Tribunal concluded that the accident resulting in the injuries to the claimant had been caused due to the rash and negligent driving of the offending vehicle by its driver. The Tribunal awarded an amount of Rs.1000/- towards 'purchase of medicines', Rs.4000/- for 'Hospitalization' and Rs.2000/- towards 'pain and suffering, special diet, and transportation' were also awarded. In all, compensation of Rs.7000/- was awarded.

The Ld. Tribunal held that the compensation was recoverable only from the owner and driver of the offending vehicle. The insurance company was exonerated holding that as the offending vehicle was insured as a Goods Carrying Commercial Vehicle and not as a Passenger carrying vehicle and as there were no goods lying in the vehicle at the time of the accident, the insurance company could not be held to be liable.

Assailing the award of the Tribunal, Ld. Counsel for the appellant has argued:

- (i) The finding of the Tribunal exonerating the insurance company cannot be sustained. At the time when the accident occurred the claimant along with his companions was going to Mahendergarh to purchase sugarcane and he had hired the offending vehicle for that purpose. In view thereof he could not be treated as a gratuitous passenger in a goods vehicle and the insurance company could not have been exonerated.

(ii) The claimant was not given proper opportunity to lead evidence. He had deposited the diet money for summoning the clerk/Ahlmad of the Court of CJM Bhiwani along with record of case State Vs. Rakesh FIR No. 19 u/s 279/337 IPC and the concerned Doctor/ record keeper of PGIMS, Rohtak. But no order summoning them had been passed. Instead, the Tribunal passed an order striking of his defence.

(iii) The compensation awarded is inadequate even as per the injuries disclosed in the MLR and the discharge card of PGIMS, Rohtak which were exhibited before the Tribunal.

Heard Ld. Counsel for the parties.

There appears to be merit in the first contention of the appellant. There is no denying the proposition that the insurance company is not liable to indemnify the owner of a goods carrying vehicle for any injury caused to a mere passenger travelling in a goods carrying vehicle who is not the owner or agent of the owner whose goods were being carried. However, the present is not a case where the claimant was a mere passenger in a goods carrying vehicle. His positive case was that he had hired the offending vehicle and was proceeding in it to Mahendergarh for purchasing sugarcane along with his companions.

The question of liability of the insurance company in a case where the person after hiring the goods vehicle is proceeding to purchase the goods or returning after delivering the goods has been considered by different High Courts and it has been held that the insurance company would be liable.

The Delhi High Court in **Oriental Insurance Co. Ltd Versus**

Hazara and others 2011(30) R.C.R.(Civil) 810 observed as under:

“3. The question which has to be answered in this case is as to whether the three deceased persons who were going in the canter to purchase their buffaloes were sitting in the said vehicle as gratuitous passengers or were sitting in the cantor with the deemed goods. To answer this question; testimony of PW-5 is relevant; there is no dispute to the fact that the said deceased persons were going in the cantor to purchase buffaloes; the purpose was to go in the cantor to purchase these buffaloes and to come back with the said articles; in this intervening period the unfortunate accident occurred. The proposition is well settled that the liability of the insurance company extends to a person who is travelling in the vehicle with his goods or is carrying his articles with him. Purpose and the import of this legislation i.e. the Motor Vehicles Act which is a benevolent legislation has been engrafted to ensure that speedy compensation is afforded to the victims of an unfortunate accident and this has to be kept in mind. Testimony of PW-5 has to be thus viewed and examined in this background. The whole purpose of sitting in this cantor was to go to the market to purchase the buffaloes and to come back with them in the same vehicle. This is clear from the version of PW-5. The words "passenger", "gratuitous passenger" and "non-gratuitous passenger" have not been defined in the Motor Vehicle Act. Learned Tribunal had examined the facts from this angle as also the purpose of the enactment of the legislation. It had rightly noted that the afore-noted persons (deceased) were neither "paid" and nor "gratuitous passengers"; they were sitting in the cantor with the deemed articles; insurance company could thus not ward off its liability. The finding of the Tribunal on this count suffers from no infirmity.

5. A reading of Section 147 of the Motor Vehicle Act in fact clearly shows that if the death or injury has occurred to any person including the owner of the goods or his authorised representative in the vehicle, insurance company is liable. Evidence in the present case shows that the accident had occurred before the victim could reach the destination point to purchase their buffaloes. The vehicle had been hired by them only for transporting the goods and they were travelling in this vehicle for this purpose which was the transportation of their goods; even though the goods were not in the vehicle when the vehicle met with the accident but the vehicle was proceeding to reach the place of its destination, in such a scenario it cannot be said that the victims were gratuitous or paid passengers. The vehicle i.e. the cantor had been hired by them only for this purpose; in such a situation if their vehicle had met with an accident, it had to be deemed that the goods were with them. It is thus clear that the finding of the learned Tribunal on this count suffers from no infirmity. Appeals of the insurance company are accordingly dismissed.”

The Karnataka High Court considered such a question in **National Insurance Company Limited Versus Sarojamma and others 2007(36) R.C.R.(Civil) 457**. In this case, a vegetable vender was travelling in a Tempo to procure vegetables for his shop when the accident occurred. The accident had occurred before he reached his destination. Evidence had come on record that the vehicle had been hired by him for the purpose of transportation of his goods. He was held to be not a gratuitous passenger nor a fare paid passenger. The insurance company was held liable. The

Court observed :

“11. By the reading of Section 147 of the Act, it is clear that if there is death or fatal injury to any person including owner of the goods or his authorised representative carried in the vehicle, the liability of the insurance company is covered, provided the owner of the goods or his authorised representative is travelling in the goods vehicle along with goods. Therefore, short question that arises for our consideration is if a person dies in an accident while travelling in the vehicle before goods were actually loaded or under transportation and if such person was travelling only to secure goods for transportation, whether the risk of such person is covered under the policy?”

12. In the instant case, it is the specific case of the claimants that deceased Kalaiah by hiring the vehicle in question was travelling in the vehicle in order to bring vegetables to his shop from a village and the evidence of PW-1 clearly reveals that her husband was travelling in the goods vehicle only to secure vegetables to his shop. The evidence of PW-1 or the pleadings of the claimants are not challenged by the insurance company. In other words, hiring of the vehicle by the deceased for transportation of vegetables only and that the deceased was travelling in the goods vehicle, in order to transport the vegetables and that he was not travelling as a gratuitous passenger or a fair-paid passenger. Ex. R-1 insurance policy covers the risk of a person who was travelling either as a owner of the goods or an authorised representative of the owner of the goods. Admittedly, deceased was not travelling in the vehicle as a fair-paid passenger or a gratuitous passenger. The accident has occurred before reaching the destination to load the goods during the course of such journey. When a person by hiring the vehicle was proceeding to the place of goods with an intention to bring those goods back to Bangalore, if such vehicle met with an accident, it has to be deemed that the vehicle was hired by the deceased only for transporting the goods and that he was travelling in the goods vehicle for the purpose of transportation of his goods. Therefore, it is clear that even though goods were not in the vehicle when the vehicle met with an accident since vehicle was proceeding to reach the place of goods for the purpose of transportation, we have to hold that the risk of such passenger covered as he was neither a gratuitous passenger or a fair-paid passenger.”

In The New India Assurance Company Ltd Versus Jameela and others 2011(8) R.C.R.(Civil) 287 the Kerala High Court held that a person continued to be the owner of the goods or the representative of the owner of the goods even while returning after unloading the goods. It was observed as under:

*“8. Relying on the principles laid down in the above decision a Division Bench of this Court in **New India Insurance Co. Ltd. v. Aalekutty Antony (2009(4) KLT 130)** and a Single Judge of this Court in **United India Insurance Co. Ltd. v. Velayudhan (2010(4) KLT 834)** have held that a person continues to be the owner of the goods or representative of owner of goods even while returning after unloading the goods.*

9. It is clear from the principles laid down in the above decisions that the risk of the person who died or sustained injury as the owner of the goods or the representative of the owner of goods is covered the insurance policy issued under Section 147 of the Motor Vehicles Act and that a person continues to be the owner of the goods or representative of owner of goods even while returning after unloading goods. The finding of the Tribunal on this point is confirmed.

10. The next question for consideration whether it is proved that the deceased was returning in the offending tempo van after unloading the goods. PW1 the widow testified that her husband transported wooden logs to Ollur and was returning in the same vehicle while the accident occurred. Her evidence on this aspect is supported by Exts.A7 and A9 and the evidence of PW2 the employer of the deceased. PW2 would say that on the previous day of the incident the deceased had proceeded to Perumbavoor to unload wooden logs. The learned counsel for the 3rd respondent in the O.P. was not able to shake his evidence in cross-examination. Further Ext.A7 agreement dated March 25, 2005 shows that deceased had taken the right for slaughter tapping in a rubber estate. Ext.A9 is the receipt issued from Anna Weigh Bridge, Kalady which shows that on June 25, 2005 at about 4 p.m. the offending vehicle had come there for weighment. It is clear from the above evidence that the deceased was returning in the tempo van after unloading the wooden logs. That being so, his risk is covered by policy issued in respect of the offending vehicle in the light of the principles laid down in the above decisions. Finding of the Tribunal on this point is confirmed.”

In the light of the above, the findings of the Tribunal that the insurance company was not liable are reversed. It is held that the insurance company would be liable to indemnify the owner of the offending vehicle in respect of the injuries sustained by the appellant.

(ii) There appears to be no merit in the contention of the Ld. Counsel for the appellant that the appellant was not given sufficient opportunity to lead evidence. A perusal of the zimni orders of the Ld. Tribunal shows that issues were framed on 22.07.2009. Vide the same order, it was directed that the PWs be summoned for 1.09.2009 on filing PF/DM within 14 days failing which the petitioner would not be entitled to assistance of the court for summoning the witnesses. On 1.9.2009 no evidence on behalf of the claimant was present. The case was adjourned to 7.10.2009 for evidence of the claimant at own responsibility. On 7.10.2009 one PW was present and he was examined. The case was adjourned to 9.11.2009 for remaining evidence of the claimant at his own responsibility. On 9.11.2009 no PW was present. The case was adjourned to 11.12.2009 for claimant evidence at own responsibility. It was also specified that this would be the last opportunity.

On 11.12.2009 again the claimant did not lead any evidence and sought

adjournment. Case was adjourned to 23.02.2010 for evidence of the claimant at own responsibility subject to costs of Rs.1,000/-. It was again specified that this would be the last opportunity. On 23.02.2010 again no PW was present. Nor were the costs deposited. The evidence of the claimants was ordered to be closed. The case was adjourned for evidence of the respondents.

From the above orders, it is very clear that the claimant was afforded sufficient opportunity to lead evidence but he failed to produce the evidence. There is no merit in the contention of the ld. Counsel for the claimant that he was not given sufficient opportunity to lead evidence.

(iii) In support of his claim the claimant had exhibited the MLR and the discharge card of the PGIMS Rohtak as Ex P1 and Ex. P-2.

In the MLR the following injuries (to the extent legible) are recorded :

1. *Inj. ob place of injury 2.1 cm x 0.2 cm x M deep on centre of forehead near base of nose fresh bleeding – Adv.X Ray/Surgeon Op.*
 2. *Inj. ob place of injury 4.5 x 1.2 cm x M deep on L cheek fresh bleeding present – Adv. X Ray/ Surgeon Op.*
 3. *0.8 x 1 cm abrasion at upper eyelid seen penetrate Hg(W) spots + over the abrasion – Adv. Opthomologist Op.*
 4. *Ob Placed Inj. of size 2.0 cm x 0.3cm on L side of angle of mouth fresh bleeding + - Adv.Surg. Op.*
 5. *2 x 1 cm red tender contusion on frontal region on Centre of forehead – Adv. Xray/ Surg. Opinion*
 6. *Crepitus C Swelling & tenderness R side of Chest + - Adv. X Ray/ Surg. Op.*
- NB:- If any injury found later on during Rx/Spl Exam may be included/intimated*

In the Follow up and Discharge Card of the PGIMS, Rohtak it is recorded (to the extent legible) :

*Alleged c/o RSA at about 9.30 pm on 10.1.2008
Right sided Chest Pain
Resp. distress
H/o Tr. Lac +
Vomiting +
Alcoholism +*

O/E :-
Small Flail Segment + Rt Chest
Aseptic Condition Rt. sided chest
Drain pulled about 50Ml hymrogiic fluid drained
Chest tube out on 12.1.2008

On S/E
Gen. features
Afb.
Vital Stable

...
Rt Chest Normal
Abd - soft
Intestine

CT head - NAD
Chst X-Ray - Multiple ribs # seen
B/L Pl. effusion seen

Ultrd Abd -
Substernal emplysema rt. side
partial plr. effusion
Rest of findings normal

Considering the multiple injuries suffered by the appellant, his admission for four days in the PGIMS Rohtak, expenditure incurred on the treatment as also the pain and sufferings undergone by him due to the accidental injuries, it would meet the interest of justice if compensation of Rs.50,000/- (Rupees fifty thousand) is awarded to him. Ordered accordingly. The enhanced compensation of Rs.43000/- (50000-7000) would be payable by the respondent–Insurance Company along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation. The impugned award is modified accordingly.

August 09, 2018

(HARINDER SINGH SIDHU)

JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No