

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

FAO 3770 of 2011 (O&M)
Date of decision: 28.11.2018

Oriental Insurance Company Limited

.....Appellant

versus

Murti Devi and others

.....Respondents

Coram : Hon'ble Mrs. Justice Rekha Mittal

Present : Ms Anamika Mehra, Advocate
for the appellant

None for the respondent

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 21.03.2011 passed by the Motor Accidents Claims Tribunal, Gurgaon (hereinafter to be referred as 'the Tribunal') whereby compensation has been assessed on account of death of Bhagwan Dass in a motor vehicular accident that took place on 10.02.2008, to the limited extent that the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

The sole submission made by counsel for the insurance company is that in the same occurrence, another occupant of ill fated Maruti Van bearing No. HR 26Q 2217, namely Mool Chand sustained injuries that proved fatal. The legal representatives of said Mool Chand filed application for grant of compensation i.e. MACT case No. 100 of 03.04.2008 titled *Smt. Saraswati and others vs. Rattan and others*, decided on 24.04.2009 which also finds reference in para 16 of the award

impugned. It is further argued that in the said case Rattan and Bhagwan Dass, driver and owner of offending vehicle (respondents No. 5 and 6 herein) contested the proceedings. The insurance company has been given right of recovery against the insured after payment of compensation to the claimants in view of findings recorded in para 16 of award dated 24.04.2009, certified copy whereof has been sought to be placed on record and accepted. It is further submitted that award dated 24.04.2009 passed qua death of Mool Chand has attained finality, therefore, findings recorded in the said case are applicable with equal force in the case at hand as Maruti Van was being used for commercial purposes in violation of terms and conditions of the policy.

There is no representation on behalf of respondents No. 5 and 6 despite service.

Taking into consideration award dated 24.04.2009 passed in MACT No. 100 of 03.04.2008 wherein Bhagwan Dass respondent No. 6 was a party and contested the proceedings, I find merit in contentions of the insurance company that the insurance company shall be entitle to recover compensation amount from the insured after payment thereof to the claimants as the vehicle in question was being used for commercial purpose in violation of terms and conditions of the policy.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

28.11.2018
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