217

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2926-2014 (O&M)
Date of Decision:23.01.2018

New India Assurance Company Ltd. ...Appellant

V/s.

Anil Kumar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Ms. Anamika Mehra, Advocate for the appellant.

Respondents no. 2 and 3 are already ex parte.

AMIT RAWAL, J. (Oral).

This order shall dispose of four appeals bearing FAO nos. 2926 to 2929 of 2014. However, the facts are being extracted from FAO No. 2926 of 2014.

The insurance company is in appeal against the findings rendered by the MACT whereby recovery rights for breach of the terms and conditions of insurance policy in respect of a vehicle Mahindra Max bearing registration No. UBL-5792 driven by Nawab-respondent No. 2 and owned by Gilija-respondent No. 3 who have been proceeded ex parte in present proceedings, have been rejected.

Ms. Anamika Mehra, learned counsel appearing on behalf of the insurance company submits that the learned MACT has committed illegality and perversity in not adverting to the statement of PW-1 claimant Anil Kumar who candidly admitted that 15-16 people were travelling in aforementioned jeep as they had hired jeep on payment of Rs. 15 per person. The vehicle was not registered for commercial vehicle. The capacity of the vehicle was not more than 9 to 12 but 15 to 16 people were traveling in aforementioned jeep.

Learned counsel for the appellant has drawn attention of this Court to the cross-examination of PW-1 Anil Kumar son of Shiv Kumar (Annexure A-1). Therefore, the insurance company is seeking recovery rights as owner and driver were already proceeded ex parte and the notice on the claimants have already been dispensed with vide order dated 23.05.2017.

I have heard learned counsel for the appellant and perused the paper book . The cross-examination of Anil Kumar reads as under:-'

> "Anil Versus Nawab etc.
>
> PW-1 Anil son of Sh. Shiv Kumar aged 28 years occupation resident of Dhoop Singh Nagar, Panipat.
>
> Stated that I tender my duly sworn affidavit Ex. PW1/A the same be kindly read in my evidence.
>
> Xxxxxxxx by Sh. R.R. Phere, Advocate for respondent no. 1 and 2 and Sh. Ritesh Sharma, Advocate for respondent no. 3.
>
> I have not brought any documentary record, regarding my age. We were total 15-16 people who were traveling in the above said jeep. The jeep started from Sanjay Chowk, Panipat to Kairana near about 12.30 PM. In the beginning I sat in the backside seat of the jeep. I was sitting in the right side of the jeep. I paid Rs. Fifteen as hire charged from Sanjay Chowk to Kairana. The driver did not give me any ticket/receipt of the above said hire charges. It was a private jeep and owner driver of the jeep had not given any tickets to any passenger. I had not demanded the same. Total six persons were sitting on the roof of the jeep, besides me there was Mohd. Abdul, Yashim and I did not know the name of the other three persons. Our jeep

struck with the canter near about 12.45 PM. I cannot tell the specific place where accident took place. Volunteered said there was no shop, buildings etc. the place of accident but there was Ganda Nala. I cannot tell the RC number of the canter which was hit by our jeep. I can not tell the exact width of the road at the place of accident public gathered at the place of accident but I do not know who called the police I do not know the exact time when police reached at the place of accident place who shifted me to the hospital. I cannot tell how many people were there in the ambulance. Today I have no referred letter for civil hospital, Panipat to PGIMS Rohtak. The police recorded my statement at PGIMS Rohtak on 11.10.2010. I can not tell the name of police official who recorded the statement. It is correct this the jeep number UBL-5792 was a taxi and I was travelling as a passenger. It is corrected that the jeep number UBL-5792 was a private jeep. I cannot tell then me of the owner of the jeep it is incorrect to suggest that the accident in question took place due to my own fault as I was traveling on the roof of the jeep. It is incorrect to suggest that the above said canter was not insured one and we filed a false case to grab the money from the insurance company intentionally. It is incorrect to suggest that I am deposing falsely.

Sd/-

RO & AC (Devinder Singh)

MACT Panipat 19.7.13"

It is a settled law that once the vehicle is insured as a private vehicle and is used for commercial purpose, even on higher premium, there is breach of terms and conditions of the insurance policy. Insurance company is entitled to recovery rights to recover the amount of compensation from owner and driver jointly and severally. This view of mine is reiterated from the ratio decidendi culled out by the Supreme Court in ***SLP(C) No. 31406-2017*** titled as ***M.S. Middle High School V/s. HDFC Ergo General Insurance Co. Ltd. and others***. Hence, the award passed by MACT is modified to this extent.

All the appeals are allowed.

January 23, 2018 **(AMIT RAWAL)**
Divyanshi **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No