In the High Court of Punjab and Haryana at Chandigarh

FAO- 2563 of 2016(O&M)
Date of Decision:5.10.2018

M/s Mohan Tractors Private Limited

---Appellant

vs.

ICICI Lombard General Insurance Company Limited and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Surinder Gaur, Advocate
for the appellant

Mr. Rajneesh Malhotra, Advocate
for respondent No. 1

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Rekha Mittal, J.

M/s Mohan Tractors Private Limited, owner of Maxi Truck bearing No. HR-46C-1651 is in appeal to express its grievance against findings of the Tribunal whereby the insurance company has been exonerated to pay compensation qua death of a gratuitous passenger carried in the aforesaid vehicle.

Notice of motion was issued on 1.8.2016. A relevant extract therefrom, reads as follows:-

> "Learned counsel for the appellant relies upon various judgments of different High Courts, to reiterate what he had submitted on the last date of hearing, to the effect that where

the policy which the insured had taken with the insurer, was a "package policy", even a gratuitous passenger would be covered by the said policy. Though in the judgments of the Supreme Court in **Rani Gupta and others vs. M/s United India Insurance Co. Ltd. and others** 2009 (12) SCC 498, as also in **National Insurance Company Ltd. vs. Balakrishnan and another** 2013 ACJ 199, the vehicles concerned were not goods vehicles, yet, a perusal of the copy of the insurance policy produced in Court today, shows that it was nonetheless a package policy.

Notice of motion be issued to the respondents, both, in the application for condonation of delay of 19 days in filing the appeal (CM No. 9329-CII-2016), as well as in the main appeal, returnable on 10.08.2016.

Process Dasti only."

Indisputably, the vehicle in question is goods carrying vehicle and the law does permit the passenger(s) to be carried in such a vehicle except owner of the goods carried therein or his authorized representative for the purpose of Section 147 of the Motor Vehicles Act, 1988. As the deceased was a gratuitous passenger in a goods carrying vehicle, insurance company cannot be fastened with liability to pay compensation. In this context, reference can be made to judgments of this Court **Data Ram and another vs. TATA AIG General Insurance Company Limited and others** FAO No. 4290 of 2014 alongwith connected appeal decided on 24.8.2017 and **Ranbir Chand vs. Tarsem Lal and others** FAO No.3242 of 2004 alongwith connected appeals decided on 20.9.2018.

The judgments referred to in the order of notice of motion pertain to gratuitous passenger carried in a car and the policy obtained by the insured is package/ comprehensive policy. That being so, I do not find an error much less perversity in the award passed by the Tribunal whereby insurance company has been exonerated of liability to pay compensation.

For the foregoing reasons, the appeal fails and is accordingly dismissed. As the appeal has been decided on merits, application for condonation of delay in filing the appeal is of academic relevance only.

(Rekha Mittal)
Judge

5.10.2018
paramjit

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