IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

240 FAO-475-2015 (O&M)

Date of decision: 04.12.2018

UNITED INDIA INSURANCE COMPANY LTD ... Appellant

Versus

RATTAN SINGH AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikas Mohan Gupta, Advocate for the appellant.
Mr. Ram Bilas Gupta, Advocate for respondent No.1.
Mr. Kamal Chaudhary, Advocate for respondent No.2.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 15.11.2014 passed by the Motor Accidents Claims Tribunal, Palwal to the extent that insurance company has wrongly been fastened with liability to pay compensation.

Counsel for the insurance company would argue that the policy obtained by SP office qua maruti gypsy is only 'Private Car Liability Only Policy', therefore, the insurance company is not liable to indemnify the insured for injury or death of gratuitous passenger carried in the vehicle. It is further argued that no special premium was paid by the insured to cover the risk of injury or death of a passenger carried in maruti gypsy aforesaid. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Balakrishnan and another, 2013(1) RCR (Civil) 762** and **Oriental Insurance Company Ltd. Vs. Surendra Nath Loomba and others, 2013(1) RCR (Civil) 603**. Further reference has been made to judgment of Delhi High Court **Yashpal Luthra and another Vs. United India Insurance Company Ltd. and another, 2011 ACJ 1415.**

Counsel for respondents No.1 and 2 would state that they have nothing to submit in respect of issue raised by the insurance company.

However, there is no representation on behalf of respondents No.3 and 4, earlier being represented by a counsel.

Perusal of the policy Ex.R-1 would substantiate plea of the insurance company that policy in question is liability only policy and the insured paid a premium of Rs.800/- towards third party and Rs.25/- for workman's compensation to one employee. As the injured Rattan Singh was a passenger carried in the gypsy, in absence of a special contract covering the risk of injury or death of a passenger in maruti gypsy, insurance company cannot be fastened with liability to pay compensation to the claimant by way of indemnification of the insured of vehicle in question. The matter would have been different, had the policy been comprehensive/package policy because in that eventuality even risk of injury or death of passenger carried in the vehicle would have been covered. In this view of the matter, findings of the Tribunal fastening liability upon the insurance company to pay compensation cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. However, it is clarified that in case the insurance company has already paid compensation to the injured/claimant, insurance company would be at liberty to recover the same from the insured in place of the claimant.

04.12.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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