556

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 948 of 2008
Date of decision: 09.09.2019

The Oriental Insurance Co. Ltd. ...Appellant

V/s.

Kitabo Devi and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. D.P. Gupta, Advocate, with
Mr. R.C. Gupta, Advocate and
Mr. B.S. Bajwa, Advocate for the appellant.

Mr. Arvind Bansal, Advocate for
respondents No. 1 to 6-claimants.

***

RITU BAHRI, J. (Oral).

The insurance company has come up in appeal against the award of the Tribunal dated 05.12.2007 whereby compensation of Rs.3,15,000/- has been awarded to the claimants on account of death of Ram Kumar, who died in a road accident which took place on 26.09.2006.

Brief facts of the case are that on 26.09.2006 Ram Kumar (since deceased) alongwith his brother Krishan Kumar had started from bus stand, Siwan for Kaithal in Mohindra Pick up van bearing registration No. HR-64-0480 (hereinafter referred to as the 'offending vehicle') which was being driven by respondent Rajinder Singh in a rash and negligent manner. The vehicle was loaded with vegetables and both of them were sitting on the top. They had tried to persuade respondent Rajinder to drive carefully but to no effect. At about 6:00 a.m. they reached near Siwan Gate, Kaithal. A barrier made of iron is installed at the said gate for preventing the entry of heavy motor vehicles in the city. The smaller vehicle can pass beneath this barrier. However, due to rash and negligent driving of Mohindra pick up van by respondent Rajinder, Ram Kumar who was sitting on the top of the vegetables had struck against the said iron barrier when the pick up van was passing beneath the said barrier. As a result, Ram Kumar had fallen down and received multiple injuries. He was taken to Shah Hospital, Kaithal from where he was referred to PGI, Chandigarh where he died on 01.10.2006. Consequently, the claimants-respondents No. 1 to 6 filed a claim petition before the Tribunal.

The parties are not in dispute with respect to finding on issue No. 1 that the accident took place on account of negligent driving by the driver of the offending vehicle. This finding has been rightly given in favour of the claimants keeping in view the FIR (Ex.P3), certified copy of the post mortem report (Ex.P4), copy of final report under Section 173 Cr.P.C. (Mark A.1), copy of statement of Krishan Lal (Mark A.2) and copy of site plan (Mark A.3) etc.

The insurance company is challenging the finding on issue No. 3 i.e. "Whether there has been any violation of the terms and conditions of the insurance policy, if so to what effect? OPR."

Learned counsel for the insurance company has argued that respondent-Rajinder did not have valid driving licence to drive the good vehicle which was loaded with vegetables and the registration certificate Ex.R3 of the offending vehicle shows that it is a light motor vehicle and the Tribunal has wrongly relied upon the judgment of ***National Insurance Company V/s. Swaran Singh,*** 2004(1) A.C.J. 1 that insurance company has not led and evidence to show that there was wilful breach of the terms of the insurance policy.

Learned counsel for the appellant has referred judgment of Hon'ble the Supreme Court in the case of ***Jagdish Kumar Sood V/s. United India Insurance Co. Ltd. and others 2018(2) R.C.R. (Civil) 358*** to contend that no separate endorsement on licence is required to drive a transport vehicle of light motor vehicle class.

The ratio of the above said judgment is directly applicable to the facts of the present case, as the registration certificate Ex. R3 shows that it is a light motor vehicle and this vehicle does not require separate endorsement to drive goods vehicle.

Keeping in view the above, the appeal is dismissed.

(RITU BAHRI)
JUDGE

09.09.2019
Divyanshi

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