**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.4062 of 2009 (O&M)
Date of decision: 05.12.2019

National Insurance Company Limited
....Appellant

Versus

Suresh Kumar and others
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Aseem Aggarwal, Advocate,
for the appellant.

Mr. Vinod Choudhri, Advocate,
for respondent Nos. 2 and 3.

Mr. Amit Kundra, Advocate,
for respondent No.6.

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RITU BAHRI J. (Oral)

CM No.18917-CII of 2009

For the reasons mentioned in the application, same is allowed and delay of 34 days in filing of the appeal is condoned.

FAO No.4062 of 2009 (O&M)

National Insurance Company Limited-appellant has come up in appeal against the awarded dated 24.02.2009 passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.1,62,810/- has been awarded in favour of claimant-respondent No.1-Suresh Kumar on account of injuries received by him in a motor vehicular accident which took place on 30.04.2004.

Brief facts of the case are that on 30.04.2004, claimant-Suresh

Kumar (respondent No.1 herein) was coming from Ambala to Kaithal in a Bolero Jeep bearing registration No.HR-20-H-4610 being driven by Rajesh Kumar-respondent No.2 (respondent No.1 in claim petition) at a very fast speet. There were five persons, including the driver and one Beant Singh in the said Jeep. At about 5.15 A.M., when the reached about 02 kms. ahead of Ismailabad towards Pehowa, one eucalyptus tree was lying on the road and due to fast speed, driver of Bolero could not control the said vehicle and struck the same against the tree. Thereafter, the Bolero vehicle struck against a truck bearing registration No.HR-68-0524, which was coming from the side of Pehowa. As a result of this accident, claimant-Suresh Kumar suffered severe injuries. He was taken to the Hospital. With regard to the accident, FIR Ex.P2 was registered. Consequently, claimant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, Tribunal came to a conclusion that the accident had taken place due to rash and negligent driving of the offending vehicle. i.e. Bolero Jeep by its driver-Rajesh Kumar and thus, returned finding on issue No.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Suresh Kumar-claimant (PW-1). Apart from this claimant proved on record disability certificate ExP1, FIR Ex.P2, medical bills Ex.P3 to Ex.P129. Ultimately, the claim petition was accepted and total compensation of Rs.1,62,810/- was awarded in favour of claimant-Suresh Kumar.

Feeling dissatisfied with the impugned award, appellant-insurance company has preferred this appeal.

The appellant is not challenging the finding given by Tribunal on issue No.1 that the accident had taken place on account rash and negligent driving of offending vehicle by its driver. The challenge is to the finding given by the Tribunal on issue Nos.3 and 4.

Learned counsel for the appellant has argued that Suresh Kumar-claimant, while appearing as PW-1, stated that he along with five other passengers was travelling in the offending vehicle. He had paid Rs.250/- as fare. Sh. R.K. Aggarwal, Senior Assistant (RW-1) had produced the copy of insurance policy along with its terms and conditions as Ex.R1. He further stated that the insurance policy Ex.R1 was issued for a private car and no premium was charged for the passengers. Learned counsel further argued that despite the fact that the claimant had stated that he had paid Rs.250/- as fare, recovery right has not been given to the insurance company-appellant as charging of fare from the passengers was violation of the terms and conditions of the insurance policy Ex.R1. Since the vehicle was insured as a private car, no premium was charged from the passengers.

Learned counsel for respondent Nos.2 and 3 (driver and owner) has argued that apart from claimant, no other passenger has been examined to show that some fare has been charged by the driver.

On this aspect, reference can be made to a judgment passed by this Court in ***United India Insurance Company Ltd. vs. Sandeep and others,*** FAO No.3606 of 2015 (decided on 06.09.2018), where in a case of accident, one passenger (Sona Devi) had made a statement that the vehicle was being plied after picking and charging fare from the passengers. She had also stated that fare from Bhiwani to Dhanana was Rs.10/- at that time. This evidence was sufficient to grant recovery rights to the insurance company as the vehicle had been insured as a private vehicle. Further, reference can be made to a judgment passed by Patna High Court in ***Branch Manager, Oriental Insurance Company Ltd. vs. Mohammad Yunus,*** 2010 (30) RCR (Civil) 414, wherein recovery rights were given to the insurance company when two of the passengers had given statements that they were charged Rs.2/- each as fare while travelling in the offending vehicle. As per insurance policy, it was issued for a private care and was not tobe used as a commercial vehicle. In ***The New India Assurance Company Limited, thorugh its Manager vs. Ramesh son of Ful Singh Pawar,*** 2017 (6) AIR Bom.R 48, a jeep was carrying 15 passengers on payment of fare and the private jeep was allowed to carrying 7+1 persons (including driver). The insurance company, in the written statement, had taken a plea that after getting investigation done by the Inspector, it was found that 15 passengers were travelling by paying fare and this was a clear cut breach of policy. The Tribunal was not correct in observing that the insurance company has not raised this argument. Keeping in view the above fact, the appeal filed by the insurance company was allowed and recovery rights were given to it as there was violation of the insurance policy. The jeep had been insured as private vehicle and there was breach of the terms and conditions of the insurance policy. The Karnataka High Court, in ***New India Assurance Company Limited, Kolhapur vs. Sri Gurunath and another,*** 2019 ACJ 1356, had allowed an appeal filed by the insurance company, where the claimant had admitted that he was a fare paid passenger. Hence, it was observed that there was violation of the terms and conditions of the insurance policy as the vehicle had been insured as a private vehicle, which was being used for commercial purpose.

Applying the ratio of the aforesaid judgments to the facts of the present case, claimant-Suresh Kumar (PW-1) stated that he had paid a fare of Rs.250/- to the driver of the offending vehicle. This was a clear cut violation of the terms and conditions of insurance policy Ex.R1 because the offending Bolero jeep was insured as a private vehicle. On this ground itself, the impugned award is liable to be modified. Only on the ground that no other passenger was examined, recovery rights cannot be denied to the insurance company (appellant).

Resultantly, the impugned award is modified and it is directed that initially, the Insurance Company shall make payment of compensation to the claimant and thereafter, it can recover the same from the owner and driver in accordance with law.

Allowed accordingly.

(RITU BAHRI)
JUDGE

05.12.2019
ajp

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