In the High Court of Punjab and Haryana at Chandigarh

FAO- 7348 of 2010(O&M)
Date of Decision: 30.5.2019

Bajaj Allianz General Insurance Company Limited

---Appellant

versus

Manphool and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Vandana Malhotra, Advocate
for the appellant
Ms. Mania Munjal, Advocate,
for Mr. S.K.Yadav, Advocate
for respondent No. 1
Mr. A.K.Yadav, Advocate
for respondent No. 4

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Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 25.8.2010 passed by the Motor Accidents Claims Tribunal, Narnaul (in short "the Tribunal") on account of death of Mahabir Singh in a motor vehicular accident that took place on 23.12.2008.

Counsel for respondent No. 1 has circulated an adjournment slip. Perusal of the records would reveal that since September 18, 2017, counsel for respondent No. 1 circulated adjournment slips on all the four dates fixed for arguments. As such, written request made on behalf of respondent No. 1 is rejected.

The sole submission made by counsel for the appellant is that as deceased Mahabir Singh was the registered owner and insured of tractor bearing No. HR-34B-9528 and he sustained injuries while travelling on mudguard of the tractor in question, the insurance company cannot be fastened with liability to pay compensation as the insured cannot be treated as a third party nor the claimants can press for compensation in view of special contract covering risk of owner driver on payment of special premium as Mahabir Singh was not driving the vehicle at the relevant time but was sitting on mudguard of the tractor driven by Raj Kumar @ Mariya-respondent No. 4.

Counsel representing respondent No. 1 is not in a position to dispute contention raised by counsel for the insurance company.

Counsel for respondent No. 4 has not disputed factual findings that deceased was insured of the vehicle and at the time of occurrence, he was sitting on mudguard of the tractor, driven by Raj Kumar @ Mariya.

As has been rightly argued by counsel for the insurance company, the legal representatives of the insured are not to be indemnified by the insurance company for death of insured because the insured does not come within the purview of third party. Similarly, the claimants cannot enforce the special contract covering the risk of death of owner driver on payment of special premium as Mahabir Singh was not driving the vehicle at the relevant time. In this view of the matter, findings recorded by the Tribunal fastening liability upon the insurance company cannot be allowed to sustain and accordingly set aside.

In view of what has been discussed hereinbefore, the appeal is allowed in the aforesaid terms.

(Rekha Mittal)
Judge

30.5.2019

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