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

FAO No.1296 of 2013 (O&M)
Date of decision: 25.09.2019

Future Generali India Insurance Co. Ltd.

.......Appellant

versus

Ram Saroop and others

......Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vishal Aggarwal, Advocate, for the appellant.
Mr. K.B. Sharma, Advocate, for respondent No.4.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, Insurance Company has laid challenge to impugned award dated 21.01.2013 of the Motor Accident Claims Tribunal, Faridabad (in short 'the Tribunal'), whereby the Tribunal, despite observing that accident had occurred on account of negligence of respondent No.4, as he was sharing his seat with two more occupants, did not illegally give recovery rights to appellant-Insurance Company.

Learned counsel for the appellant-Insurance Company *inter alia* contends that the Tribunal failed to appreciate that offending three-wheeler was overloaded being occupied by one extra passenger in violation of terms and conditions of insurance policy (Ex.RX). Therefore, appellant-Insurance Company was liable to recover the compensation amount, which has been paid by it to respondents No.1 to 3

– claimants.

On the other hand, learned counsel for respondent No.4 taking aid of Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'), refuting above submissions, pleaded legality and validity of the impugned award.

Having given thoughtful consideration to the rival submissions, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

Section 149(2) of the Act specifies the conditions under which a insurance company can seek exoneration from its liability to indemnify the insured.

Section 149(2) of the Act is reproduced hereunder for ready reference: -

"(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular."

Relevant portion of the impugned award is also referred to hereunder: -

"32. x x x x x x x x x

The sharing of the seat by the driver with a passenger in a passenger's vehicle does not fall in any of the above mentioned grounds which are available to the insurer to defend the action against it.

33. Insurance policy Ex.RX is the contract of insurance *between the parties. There is no term and condition in the insurance policy Ex.RX that if the driver shares the seat with any passenger, it will amount to violation of the contract of insurance. The insurance policy Ex.RX has been issued in accordance with the provisions of Chapters 10 and 11 of the Act. Section 125 of the Act does not fall in Chapters 10 or 11 rather it falls in chapter 8 with respects to the control of traffic.*

34. This fact is not disputed that the insurance policy Ex.RX has been issued for a passenger vehicle. This vehicle was allowed for carrying passengers on hire or reward with carrying capacity not exceeding six. So, the vehicle in question was a passenger vehicle which was insured for carrying the passengers on hire or reward. So, the victim was covered under the contract of insurance between the respondents no.1 and 2. The fact that respondent no.1 has shared his seat with the victim and PW-2 Bishram Saini is not the ground available to the insurance company-respondent no.2 to defend the action against it."

Learned counsel for the appellant-Insurance Company has not been able to point out any illegality or infirmity in the above finding of the learned Tribunal.

In view of above, appeal is dismissed.

September 25, 2019 **(Ramendra Jain)**
R.S. **Judge**

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