IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 2809 of 2016(O&M)
Date of Decision: 25.11.2019

Oriental Insurance Company Limited

......Appellant.

Versus

Jagdev Singh and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ashish Yadav, Advocate
for the appellant-Insurance Company.

Appeal *qua* respondents no.1 and 2, dismissed on 09.03.2017.

Mr. Naveen Batra, Advocate
for respondents no.3 and 4.

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LISA GILL, J (Oral).

This appeal has been filed by the Insurance Company challenging award dated 07.01.2016, passed by the learned Motor Accident Claims Tribunal, Sirsa (for short 'Tribunal'), whereby the appellant-Insurance Company was held liable to pay the compensation to the claimant-respondents.

Claimants-respondents no.3 and 4, who are the parents of the deceased, filed a petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') claiming compensation on account of death of their son Shubham Chandel, which took place on 09.09.2014, due to rash and negligent driving of driver of the offending vehicle i.e., bus bearing registration no. HP-72-7657 by its driver-respondent no.1-Jittu Singh @ Ludar. FIR No. 99 dated 09.09.2014 was registered, in this respect.

Learned tribunal on considering the evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. Compensation to the tune of ₹6,15,000/- was awarded by the learned tribunal.

The offending bus was admittedly insured with the appellant-Insurance Company. Learned tribunal concluded that there being no breach of any terms and conditions of the policy, the Insurance Company, is liable to indemnify the insured.

Aggrieved therefrom, present appeal has been filed by the appellant-Insurance Company.

Learned counsel for the appellant-Insurance Company vehemently argues that there is a breach of the terms and conditions of the policy, inasmuch as, the driver and conductor of the offending bus allowed the deceased along with others to travel on the rooftop of the bus being overcrowded. It is thus prayed that this appeal be allowed and the Insurance Company be absolved of its liability to pay the compensation to the claimants.

Learned counsel for respondents no.3 and 4 have refuted the abovesaid arguments and submits that the learned tribunal has rightly held the appellant-Insurance Company to pay the compensation to the respondents-claimants. It is thus prayed that this appeal be dismissed and the award by the learned tribunal be upheld.

I have heard learned counsel for the parties and have carefully gone through the file with their assistance.

Notice of motion in this appeal was issued on the limited plea of the appellant seeking recovery rights from the owner of the offending bus as the deceased was travelling on the rooftop of the bus when the accident in question had taken place. Appeal *qua* the respondents-claimants was dismissed on 09.03.2017.

The matter in hand is squarely covered by a judgement of the Division Bench of this Court in **Oriental Insurance Company Limited Vs. Smt. Meena Devi and others 2012(2) R.C.R (Civil) 234.** In the abovesaid case, some of the passengers were travelling on the rooftop of an over-loaded bus. Due to striking of a branch of a tree, one of the passengers on the rooftop died while others were injured. Division Bench of this Court conclusively held that travelling of the passenger on the rooftop of a bus by itself cannot absolve the insurance company of its liability. It is observed that when the Insurance Company, as per the policy, has undertaken to pay in respect of a particular number of passengers and it was one passenger who had lost his life, the Insurance Company could not be absolved of its liability and was thus liable to indemnify the insured. The Hon'ble Supreme Court in **National Insurance Company Vs. Anjana Shyam, 2007(4) R.C.R (Civil) 30** had taken into account that as against the carrying capacity of 42 passengers including driver and conductor, the bus was carrying 90 passengers including those on the rooftop of the bus. It is in this situation, the Insurance Company was held liable to pay compensation awarded to 42 passengers out of the said 90 passengers and the higher of the 42 awards would be taken into account. In the instant matter, it is one person who has lost his life. Therefore, the appellant-Insurance Company, cannot be absolved of its liability to pay the compensation on the ground that the deceased was travelling on the rooftop of the bus.

Learned counsel for the appellant-Insurance Company is unable to point out any illegality or infirmity in the impugned award dated 07.01.2016, passed by the learned tribunal, Sirsa, which calls for interference by this Court, at the instance of the appellant-Insurance Company.

No other argument has been raised.

There is a delay of 30 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is accordingly disposed of.

Appeal is accordingly dismissed with no order as to costs.

[LISA GILL]
Judge

25.11.2019
s.khan

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