IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 22.11.2019

XOBJC-222-CII of 2016 (O&M) in/and
FAO No.8672 of 2015 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Smt. Monika and others ... Respondents

FAO No.3349 of 2016 (O&M)

M/s Gawar Construction Ltd. ... Appellant

Versus

Smt. Monika and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vishwajit Bedi, Advocate for the insurance company.

Mr. Sunny Tyagi, Advocate for
Mr. Vikrant Hooda, Advocate for the owner.

Mr. Raj K. Narang, Advocate for the claimants/cross objectors.

Mr. Santosh Bhardwaj, Advocate for
Mr. Partap Singh, Advocate for driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.8672 of 2015, 3349 of 2016 and cross objections No.222-CII of 2016 as these have emerged out of the same award dated 03.09.2015 passed by the Motor Accidents Claims Tribunal, Gurgaon whereby compensation has been assessed on account of death of Suwan @ Suban Singh in a motor vehicular accident that took place in the intervening night of 30/31.12.2013.

FAO No.8672 of 2015 has been filed by United India Insurance Co. Ltd. (hereinafter referred to as 'the insurance company'), No.3349 of 2016 has been filed by M/s Gawar Construction Ltd., registered owner of offending truck No.HR-39-A-3351 whereas the cross objections have been filed by the claimants seeking enhancement of compensation.

For facility of reference, M/s Gawar Construction Ltd. would be referred to as 'the company' and cross objectors as 'claimants'.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Tribunal on issue No.1.

Counsel for the company would state that appeal has been filed to assail findings of the Tribunal giving right of recovery to the insurance company.

Counsel for the insurance company would argue that as Suwan @ Suban Singh, driver of canter No.HR-55L-7685 hit the stationary truck from behind, contributory negligence is liable to be attributed to him. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Raj Rani and others Vs Oriental Insurance Co. Limited and others, 2009 ACJ 2003.**

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 by relying upon testimony of Karampal PW4, examined to discharge onus of issue No.1.

Counsel for the company has assailed findings of the Tribunal on issue No.3 with regard to route permit and fitness certificate on the basis whereof the insurance company has been given right of recovery against driver and owner of the offending vehicle. It is vehemently argued that non-possessing of a route permit and fitness certificate is not a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act').

Counsel for the insurance company, in reply, has supported findings of the Tribunal on issue No.3 with regard to the insured being guilty of violation of terms and conditions of insurance policy.

I have heard counsel for the parties, perused the paper book and records.

The Tribunal framed issue No.1, reads thus:-

> Whether the accident in question was caused by respondent No.1 while driving vehicle No.HR-39-A-3351 in a rash and negligent manner resulting in death of Sh. Suwan @ Suban Singh as alleged?OPP.

To prove their case, claimants examined Karampal son of Bir Singh PW4. He tendered into evidence his affidavit Ex.PW4/A. In paras 1 and 2 of the affidavit, he has given a detailed account as to how the occurrence in question took place. A relevant extract from his testimony, reads as follows:-

> 1. xx On the intervening night of 30/31.12.2013, my employee/driver Suwan @ Suban Singh S/o Sh. Prem Singh R/o Village Jhuppa, PW-Jewar, Distt. Gautam Budh Nagar, UP was driving vehicle No.HR-55-L-7685 (Eicher canter)

carefully and at a moderate speed by following all the traffic rules, regulation when he reached near the business premises of M/s Sunbeam Auto Pvt. Ltd., Gurgaon, suddenly he found a truck bearing registration No.HR-39-A-3351 parked on the main road without following any prescribed traffic rules and regulation or without giving any indicators/parking light by the respondent No.1.

2. I say that my driver Suwan @ Suban Singh could not notice the truck bearing No.HR-39-A-3351 due to the foggy night, resultantly the Eicher canter of Suwan @ Suban dashed into the said truck bearing registration No.HR-39-A-3351 which was parked on the main road carelessly without any signal, parking light and indicator due to which Suwan @ Suban sustained multiple, grievous and fatal injuries all over his body and died on the spot. I took said Suwan @ Suban to General Hospital, Gurgaon where doctor on duty declared him dead. Police had recorded my statement on which an FIR No.520 dated 31.12.2013 under Section 283/304-A IPC, PS Kherki Daula was got registered against the respondent No.1.

The witness was cross examined at length by counsel for respondents before the Tribunal. A plain reading of cross examination makes it evident that the facts narrated by the witness with regard to accident being the result of fault of offending vehicle being parked on the road without any signal/indicator remains untouched, thus, amounts to admission on the part of contesting respondents before the Tribunal. The driver of offending vehicle did not appear in the witness box to counter testimony of Karampal or to say something with regard to contributory negligence of the deceased. The accident took place in the intervening night of 30/31.12.2013 which was stated to be a foggy night. Taking into consideration un-rebutted and un-challanged testimony of Karampal, the insurance company can neither derive any advantage to its contention from the judgment in **Raj Rani and others's case (supra)** nor can find fault in findings of the Tribunal on issue No.1 upholding plea of the claimants that accident is the result of rashness and negligence of the offending vehicle that was parked on the main road without any signal, parking light and indicator. In this view of the matter, I do not find any reason to differ with findings of the Tribunal on issue No.1 and accordingly, the same are affirmed.

The Tribunal framed issue No.3 to the following effect:-

> Whether respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy?OPR

The insurance company filed the written statement and raised preliminary objections in paras 1 to 8. In para 6, it was averred that there was violation of terms and conditions of insurance policy but without specifying as to how the same have been violated. The insurance company filed application dated 14.05.2015 for issuance of direction to respondent No.2/owner to produce route permit and fitness certificate. Indisputably, respondent No.2 therein did not produce copy of route permit and fitness certificate and as such the application was disposed of by the Tribunal. The non-possessing of route permit and fitness certificate is not a defence available to the insurer under Section 149(2) of the Act. The vehicle was registered in the State of Haryana and accident also took place within the local limits of State of Haryana. The Tribunal, without examining the provisions of Section 149(2) of the Act and judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. VS. Chella Bharathamma, 2004(4) RCR (Civil) 399 (SC)** pertaining to the question of permit had proceeded to decide issue No.3 against the driver and owner of the vehicle and wrongly given right of recovery to the insurer against both of them despite there being no privity of contract between the insurer and driver of the offending vehicle. In this view of the matter, I find merit in contention of the company that findings of the Tribunal on issue No.3 on the basis whereof the insurance company has been given right of recovery are not legally sustainable and ordered to be set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

Counsel for the claimants/cross objectors would state that he has the instructions to withdraw the cross objections.

Dismissed as withdrawn.

For the foregoing reasons, the appeal filed by the insurance company is dismissed and appeal filed by the company is partly allowed in the aforesaid terms.

22.11.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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