

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

FAO-2856-2018 (O&M)

Date of decision: 03.05.2019

The Oriental Insurance Company Ltd.

...Appellant

Versus

Smt. Baljinder Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Satpal Dhamija, Advocate for the appellant.

Ms. Rukhsaar Dhindsa, AAG, Punjab
for respondent Nos.5 & 6.

Mr. Barjesh Kumar Sharma, Advocate for respondent No.7.

H.S. MADAAN, J. (Oral)

Smt. Baljinder Kaur-widow, Smt. Usha Rani-mother, Sh. Tarsem Lal-father, Ms. Tammana Rani-sister of Raman Kumar, an unfortunate victim of a road side accident had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) for grant of compensation against the respondents i.e. Punjab State Bus Stand Management Company Ltd. (PUNBUS), Chandigarh, General Manager, Punjab Roadways, Jalandhar Depot-II, Jalandhar-owner, Harkewal Singh-driver and the Oriental Insurance Company Ltd., Chandigarh-insurer of Bus No.PB-08-BA-9671 (hereafter referred to as the offending bus), claiming compensation.

As per version of the appellants/claimants, Raman Kumar

was aged about 21 years and was working with Fatehgarh Bus Service and getting salary of Rs.10,000/- per month. On 06.11.2015, at about 12.45 PM, said Raman Kumar was crossing Moga-Ludhiana road, trying to go towards Police Station City Moga from the side of Bus Stand, Moga to meet his uncle, who was standing in front of Police Station City, Moga. In the meanwhile, the offending bus being driven by respondent No.3- Harkewal Singh at a fast speed, in a rash and negligent manner, without blowing horn, came and hit Raman Kumar, with a result Raman Kumar fell on the ground and suffered multiple injuries, to which, he succumbed at the spot. Subsequently, FIR No.139 dated 07.11.2015 for offences under Sections 279, 304-A IPC with regard to accident was registered against Harkewal Singh, bus driver at Police Station City, Moga. According to the claimants, they were dependent upon the earnings of Raman Kumar deceased. They had filed the claim petition in question, claiming compensation of Rs.75 lacs.

On notice, all the respondents appeared. Respondent Nos. 1 & 2 filed a joint written statement, whereas, respondent Nos.3 & 4 came up with separate written replies. In the joint written reply filed by respondent Nos.1 & 2, they denied the involvement of bus in question in the accident, coming up with a plea that a false claim petition has been filed against them to extract money. Written statement filed by respondent No.3 is also on the similar lines, whereas, respondent No.4-Insurance Company in the written reply filed by it also denied involvement of bus in question in the accident, coming up with a plea that bus driver was not

holding a legal and valid driving license at the time of accident and there was breach of other terms of the insurance policy also, therefore, insurance company was not liable to indemnify the insured.

On the pleadings of the parties, following issues were framed:-

1. Whether death of Raman Kumar took place in Motor Vehicular accident occurring due to rash and negligent driving of bus No.PB-08/BA-9671 by respondent No.3? OPA.
2. Whether the claimants are entitled to compensation, if so, to what extent and from whom? OPP.
3. Whether respondent No.3 was not holding the valid and effective driving license at the time of accident? OPR.
4. Whether there is breach of any condition of the insurance policy by the insured, if so, its effect? OPR.
5. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Moga decided issue Nos.1 to 4 in favour of the claimants against the respondents and awarded compensation of Rs.15,82,000/- to the claimants, payable by all the four respondents, jointly and severally. They were granted interest @ 7% p.a. from the date of filing of claim petition till actual realization. That was so done, vide detailed award dated 09.11.2017.

Respondent No.4-Insurance Company felt aggrieved by the said award and has approached this Court, by way of filing the present appeal, notice of which was given to respondent Nos.5 to 7 only. Those respondents appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The first and foremost argument advanced by learned counsel for the appellant-Insurance Company was that the bus in question was not having a fitness certificate at the time of accident. As a matter of fact, the fitness certificate had been issued upto year 2013 only, whereas, the accident had taken place on 06.11.2015, thus, it was a clear breach of terms and conditions of insurance policy, absolving the insurance company of its liability. Whereas, learned State counsel has submitted that this contention is devoid of merit and it has been dealt with in detail by the tribunal, finding no merit in it, therefore, insurance company cannot escape liability to pay compensation.

After hearing learned counsel for the parties, I find that the tribunal has dealt with this aspect in a very detailed and convincing manner. For ready reference, the relevant operation of the award in that regard is reproduced as under:-

“After giving anxious thoughts to the rival contentions and going through the record, this tribunal is of the considered view that respondent No.4 insurer is liable to indemnify respondent Nos.1 and 2. Insurance policy was issued on 29.05.2015 i.e. much after expiry of the term of fitness certificate. The insurance company very well knew that the vehicle is being regularly used by respondent Nos.1 and 2. At that time insurance company issued the policy without insisting upon obtaining of fitness certificate by respondents No.1 and 2. In these circumstances, respondent No.4 cannot raise this issue in order to avoid payment of compensation, particularly when, there is nothing to show that any mechanical defect in the bus led to the accident. It is well settled that every breach of condition of

*insurance policy does not exonerate the insurer from pay the liability towards the third party. In this regard, this tribunal can rely upon the judgment of Hon'ble Supreme Court in **Lakhmi Chand Versus Reliance General Insurance, 2016(3) Supreme Court Cases 100**, wherein it was held as under:*

It becomes very clear from a perusal of the above mentioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company. In the instant case, the respondent-Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods-carrying vehicle. Further, as has been held in the case of B.V. Nagaraju that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end. In the instant case, it is undisputed that the accident was infact caused on account of the rash and negligent driving of the offending vehicle by its driver, against whom a criminal case vide FIR No. 66 of 2010 was registered for the offences referred to supra under the provisions of the [IPC](#). These facts have not been taken into consideration by either the State Commission or National Commission while exercising their jurisdiction and setting aside the order of the District Forum. Therefore, the judgment and order of the National Commission dated 26.04.2013 passed in Lakhmi Chand Versus Reliance General Insurance is liable to be set aside, as the said finding recorded in the judgment are erroneous in law.

In view of law laid-down in above said judgment only breach of the condition of the policy, which is so fundamental to

the contact that it vitiate the contract itself can exonerate the insurer from the liability. Had the accident taken place due to mechanical defect in the bus, in that event, the aforesaid plea by the insurer could have required close scrutiny, but in this case, the insurer cannot avoid the liability to pay the compensation. Therefore, respondent No.4 has to indemnify the insured. Accordingly, all these issues are decided in favour of the claimants.”

A perusal of the award goes to show that as has been rightly observed by the tribunal, the insurance company should have insisted upon obtaining of fitness certificate by respondent Nos.1 & 2, while issuing the insurance policy and if it did not do so, then, it cannot raise this plea later on. More particularly, when there is nothing to show that the accident in question had taken place due to any mechanical defect in the bus. Therefore, it cannot be said that any term or condition of insurance policy was violated, resulting in insurance company getting absolved of its liability to indemnify the insured with regard to its liability to pay compensation to the claimants under the award. No other argument was advanced by learned counsel for the appellant. I find that the impugned award is very reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for the award being set aside, by way of acceptance of the appeal. The appeal being without merit stands dismissed.

03.05.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No