IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO-214-2021(O&M)

National Insurance Company Limited

.......Appellant

Versus

Krishna and others

......Respondents

2. FAO-216-2021(O&M)

National Insurance Company Limited

.......Appellant

Versus

Rajpati and others

......Respondents

3. FAO-217-2021(O&M)

National Insurance Company Limited

.......Appellant

Versus

Santro and others

......Respondents

4. FAO-218-2021(O&M)

National Insurance Company Limited

.......Appellant

Versus

Seva and others

......Respondents

Date of decision: 23.04.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vinod Gupta, Advocate for the appellant in all the appeals

ANIL KSHETARPAL, J.

By this order four FAOs i.e FAO-214-2021, FAO-216-2021, FAO-217-2021 and FAO-218-2021.

These four appeals have been filed against a common award passed by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal'), while allowing five claim petitions filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the 1988 Act).

The parents of five young persons who died in a motor vehicular accident on 30.06.2018 filed claim petitions under Section 163-A of the 1988 Act. It is the case of the claimants that the deceased were travelling in a Verna make car bearing registration plate no. HR-32-E-0115. At the relevant time, the car was being driven by Sunny son of Suresh Kumar whereas its registered owner is Rajesh Kumar son of Ram Pal. The claimants have pleaded that all of a sudden, a stray bull came in front of the car and the car turned upside down, resulting in death of five persons namely Vicky, Ravi, Sandeep, Rishu and Jatin. A DDR no. 012 dated 01.07.2018 was recorded in Police Station City Tohana on the statement of Ravi Kumar son of Maya Ram. The claimants claimed compensation on the basis of structural formula notified by the Central Government as provided under schedule II of the 1988 Act.

Respondent no.1 and 2 filed a joint written statement admitting the accident in question. However, it was contended that there was no negligence on the part of respondent no.1 and the accident took place due to the reasons pleaded in the petition. The Insurance Company while filing the written statement took a stand that no accident has taken place with the car in question and the vehicle was not being driven by a person holding a valid and effective driving license.

The claimants examined as many as six witnesses to prove their case apart from tendering document Ex. P-1 to P-11. On the other hand, respondent no. 1 and 2 produced documents Ex. R-1 to R-3 whereas the Insurance Company tendered in evidence document Ex. R-4. No oral evidence was led by the respondents.

Learned Tribunal while relying upon the notification issued by the Central Government on 22.05.2018 in exercise of its powers conferred by sub-section 3 of Section 163-A of the 1988 Act allowed the petitions and awarded compensation of Rs.5,00,000/- in each claim petition. Against the aforesaid common award, these four appeals have been filed.

Learned counsel representing the insurer contends that the car was being used as a cab on hire and therefore, there is a violation in the terms of the policy. He further contends that seven persons were travelling in the vehicle which is beyond the registered seating capacity of that vehicle, therefore, the insurance company is not liable.

The arguments of the learned counsel for the Insurance Company have been heard at the stage of preliminary hearing. It may be noted here that there is no evidence that the car was being plied on hire at the relevant time. As noticed above, the respondents have not led any evidence. The Insurance Company did not plead this fact in its written statement. Consequently, the Tribunal did not frame any issue on this aspect. As noticed above, the Insurance Company has not led any evidence apart from producing Ex.R-4. Thus, the argument of the learned counsel is without any substance because the Insurance Company has failed to lay any foundation by pleading the aforesaid fact and thereafter, corroborate the same by leading any evidence. Hence, the contention is rejected.

Next argument of the learned counsel is that at the relevant time, seven persons were travelling in the vehicle whereas the registered seating capacity of the vehicle is of five only. It may be noted here that this aspect has already been examined in detail by the Hon'ble Supreme Court in **National Insurance Company Limited vs. Anjana Shah** (2007) 7 SCC 445. In the aforesaid case, a bus carrying 90 passengers had met with an accident whereas the carriage permitted only 42 passengers. In that accident, 26 persons had died. The Hon'ble Supreme Court held that the insurer is liable to the extent of persons permitted under the carriage permit. Similarly, in **United India Insurance Company Ltd. Vs. KM Poonam** (2011) 2 PLR 477 a jeep with a passenger capacity of six persons including the driver had met with an accident resulting in death of seven persons whereas others were injured. The vehicle was found travelling with 15 passengers in that case also the Hon'ble Supreme Court held that the Insurance Company is liable only to the extent of the seating capacity of the vehicle. In the present cases, it is undisputed that the vehicle was permitted to be occupied by five persons. Only five claim petitions were filed.

In view thereof, there is no ground to admit the appeals.

Hence, all the four appeals are dismissed.

23.04.2021 **(ANIL KSHETARPAL)**
rekha **JUDGE**

Whether speaking/reasoned Yes /No
Whether Reportable Yes / No