124 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-582-2021 (O&M)
Date of decision: 09.03.2022

IFFCO TOKIO General Insurance Company Limited

....Appellant

Versus

Seema Tripathi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Aggarwal, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

In this appeal preliminary arguments were heard on 17.08.2021 and the judgment was reserved. However, due to oversight the judgment could not be dictated. Thereafter, an application has been filed for staying further proceedings before the Executing Court. The matter has been re-heard.

The Insurance Company assails the correctness of the judgment passed by the Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal'), while allowing the petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the 1988 Act') on account of death of late Sh. Ashok Kumar Tripathi, who was working as a Deputy General Manager in Gayatri Projects Limited.

The learned counsel representing the appellant does not dispute the correctness of the finding of the Tribunal with regard to the involvement of the insured vehicle. However, he challenges the judgment passed by the Tribunal on the following two grounds:-

a) The accident had taken place on a road, which was not open to the general public, therefore, the claim petition cannot be filed under Section 166 of the 1988 Act.

(b) It was a case of culpable homicide not amounting to murder, therefore, the Tribunal had no jurisdiction to decide.

While elaborating, the learned counsel representing the Insurance Company draws the attention of the Court to Section 2 (34) and Section 147 (1)(b)(i) of the 1988 Act and contends that the Legislature has used the phrase "*public place*" in Section 147 which has been defined in Section 2 (34). He contends that since the road was not open to the general public, therefore, the matter could not be entertained by the Tribunal. He further submits that since in the FIR it has been alleged that the driver of the truck (offending vehicle) had deliberately brought his truck to a place where the officials were standing, Therefore, it is a case of culpable homicide.

At this stage, it would be appropriate to extract Section 2(34) and Section 147 of the 1988 Act:-

> "**Section 2(34**) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage"
>
> **147. Requirement of policies and limits of liability.—(1)** In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—
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> (*a*) is issued by a person who is an authorised insurer; and
>
> (*b*) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(*i*) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;

(*ii*) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.

(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.

(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.

(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in

respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

On a careful reading of Section 147, it is evident that clause (i) of clause (b) of Section 147 (b) talks about the use of a motor vehicle in a public place. The phrase *"public place*" has been defined in Section 2 (34) of the Act. The definition of a public place is wide. The phrase *"public place*" is not restricted to only a road or street or passage which open to the general public. It also includes other places whether thoroughfare or not. Learned counsel representing the appellant submits that since the phrase *"public place*" is followed by the phrase "*to which the public has a right to access and includes any place or stand on which the passengers are picked up or sat down by the State carriage"***,** therefore, the road which was under preparation and not open to the public is not included in the definition of public place. In support of this argument, he relies upon decision rendered in **'Rajammal Vs. Associated Transport Company and others 1969 (2) MLJ 620, Oriental Fire and General Insurance Company Ltd. vs. Rabari Gandu Punja, 1982 ACJ 2002 and Motor and General Finance (India) Pvt .Ltd. vs. Mary Mony and others 1991 ACJ 101.**

This Court has carefully read the judgment passed in **Rajammal's case (supra)**. In that case, deceased husband of the appellant was travelling in a lorry which entered into the compound called Huzur Garden which was a private area. Her husband who was travelling alongwith the vehicle carrying iron shafts died as he fell down due to a jerk and got hit by some of the shafts. In those circumstances, the Court held that the accident did not take place at a public place.

Hence, the aforesaid judgment is not applicable.

In **Oriental Fire and General's case (supra)** a goods truck entered the compound of the Western India Tiles Company, Makansar (Morvi). It ran over manual labourer while reversing the vehicle. Since factory premise was not a public place, therefore, the court took a different view. Both the aforesaid judgments are interpreting the provisions of Motor Vehicles Act, 1939. In **Motor and General Finance (India)'s case (supra)** the victim was the owner of the vehicle itself. The place, where the accident took place, was a garage. Someone started the engine and suddenly the bus moved backward and hit the compound wall where the husband of the claimant was leaning to the side of the another bus.

It is apparent that all these judgments are with respect to an accident which took place in a private area.

As already noticed, the deceased was working as Deputy General Manager, in Gayatri projects limited. At the time of accident, deceased alongwith his colleagues, were working on KGP road near Hoshangabad when the truck ran over them. In my considered opinion, it would not be appropriate to hold that the accident did not take place on a public road. It may be different matter that the road was yet to be thrown open to the general public. Nonetheless it was a public road.

The next argument of the learned counsel is with reference to the FIR. It may be noted here that the FIR is the only a first information given to the police. Such FIR is not sufficient to hold that it was a case of culpable homicide not amounting to murder because FIR is to be used as a corroborative evidence, in a case, where the facts are proved by leading evidence. The driver of the offending truck has not been examined. In view thereof, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

09.03.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No