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

**FAO No.1091 of 1995**
**Date of Decision:21.03.2023**

New India Assurance Company Limited

……Appellant

Versus

Sushila Devi and others

……Respondents

***BEFORE:*** ***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

*****

**Argued by**:-Mr. Neeraj Khanna, Advocate and
Mr. Abhinav Khanna, Advocate
for the appellant-Insurance Company.

Mr. Digvijay, Advocate appearing for
Mr. Ashish Gupta, Advocate
for respondents No.1 to 3.

Mr. Pawan K. Hooda, Advocate
for respondents No.4 and 5.

***MEENAKSHI I. MEHTA, J***

Feeling aggrieved and dis-satisfied with the Award passed by learned Motor Accident Claims Tribunal, Hisar (for short 'the Tribunal') on 07.10.1993, whereby respondents No.1 to 3-claimants (here-in-after to be referred as 'the claimants') have been awarded compensation to the tune of Rs.86,400/-, along-with interest @ 12% per annum from the date of filing of the petition till its actual realization, on account of the death of one Gopal in a motor vehicular accident and the appellant-Insurance Company (here-in-after to be referred as 'the appellant') as well as respondents No.4

and 5 (arrayed as respondents No.1 & 2 respectively in the claim petition), being the insurer, driver and the owner of the Canter bearing registration No.HR-20-A-8388 (for short 'the offending vehicle'), have been held to be jointly and severally liable to pay the award amount to the claimants, the appellant has preferred the instant appeal to lay challenge to the same.

2. Bereft of the unnecessary details, the facts, culminating in the filing of the present appeal, are that the claimants, i.e the wife, daughter and son of the above-named deceased respectively, filed a petition against the appellant and respondents No.4 & 5 for claiming compensation of Rs.4 (four) lac, while averring that on 11.05.1993, the deceased and some other persons were travelling in the offending vehicle for going to Kotkapura from Village Nehala and the deceased was sitting in the back portion of this vehicle which was being driven by respondent No.4 in a rash and negligent manner. When they reached near Bhuna, the branch of a tree grown/standing on the road side, struck against the head of the deceased and resultantly, he sustained fatal injuries in this accident and succumbed to the same in the hospital.

3. The respondents, i.e the appellant, the driver and the owner of the offending vehicle, filed their separate written statements contesting the claim, as set-forth by the claimants in their petition, on various grounds. The issues were framed on 17.05.1994. After appreciating and evaluating the evidence as led by the parties on the record and hearing their learned counsel, the Tribunal passed the impugned Award, granting compensation to the claimants, as already discussed in the opening para of this judgment.

4. I have heard learned counsel for the appellant-Insurance Company as well as learned counsel appearing for respondents No.1 to 3-claimants and learned counsel for respondents No.4 and 5 in the instant appeal and have also perused the record carefully.

5. Learned counsel for the appellant-Insurance Company have contended that the deceased was travelling in the offending vehicle as a gratuitous passenger and this vehicle was a 'goods carrying vehicle' and had been insured with the appellant as such and therefore, the risk of death or any bodily injury to the gratuitous passengers travelling therein, was not covered under the insurance policy issued in respect thereof and in these circumstances, the appellant could not have been saddled with the liability to pay the award amount to the claimants.

6. Per contra, learned counsel appearing for respondents No.1 to 3-claimants and learned counsel for respondents No.4 and 5 have argued that the deceased was travelling in the offending vehicle, along-with his goods/belongings, for going to Kotkapura and it being so, the appellant cannot escape its liability to pay the amount of compensation, as awarded by the Tribunal.

7. The accident resulting into the death of said Gopal had taken place on 11.05.1993, i.e after the Motor Vehicles Act of 1988 came into force but before its amendment in the year 1994. A perusal of Exhibit R-1, i.e the copy of the insurance policy, reveals that the offending vehicle had been insured with the appellant-Insurance Company as the 'Commercial Vehicle 'G' Policy B', as meant for 'Goods Carrying Vehicles'. In ***New***

***India Assurance Company Limited Vs. Asha Rani 2003(1) RCR (Civil) 671,*** a three Judges' Bench of Hon'ble Supreme Court, while specifically dealing with a bunch of appeals covered under the Motor Vehicles Act, 1988 (as it stood prior to its amendment in 1994), has categorically observed that "*the insurer would not be liable for paying the compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner or his representative dies or suffers any bodily injury*". These observations are fully applicable to the instant appeal and in the light of the same, it becomes quite explicit that the appellant-Insurance Company cannot be fastened with the liability to pay compensation, as granted to the claimants.

8. As a sequel to the fore-going discussion, the appeal in hand is hereby allowed to the effect that the appellant-Insurance Company stands exonerated/absolved from the liability to pay the amount of compensation to the respondents-claimants. However, it is worth-while to mention here that as mentioned in the order dated 16.01.2019, the claim has already been satisfied by the Insurance Company. It being so, the appellant-Insurance Company shall be entitled to recover the amount of compensation, as paid by it to the claimants, from respondents No.4 and 5, i.e the driver and owner of the offending vehicle, by resorting to the relevant procedure as prescribed for this purpose.

**(MEENAKSHI I. MEHTA)**
**JUDGE**

**March 21, 2023**
pooja

*Whether speaking/reasoned:* *Yes*
*Whether Reportable:* *Yes*