

[104] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 15.02.2023

1. CM Nos.13047–50 CII of 2015&
FAO No.4069 of 2015(O&M)

Bijender

...Appellant

Versus

M/s ICICI Lombard General Insurance
Company Ltd. and another

....Respondents

AND

2. CM No.13279–82 CII of 2015&
FAO No.4128 of 2015(O&M)

Bijender

...Appellant

Versus

M/s ICICI Lombard General Insurance
Company Ltd. and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Rajesh Lamba, Advocate for the appellant(s) in both
cases.

Mr. Rajbir Singh, Advocate for respondent No.1/Insurance
Company in both cases.

B.S. Walia, J. (Oral)

CM No.13047– CII of 2015 in
FAO No.4069 of 2015 (O&M) &

CM No.13279– CII of 2015 in
FAO No.4128 of 2015 (O&M)

For the reasons as are mentioned in the applications, the
same are allowed. Delay of 627 days and 367 days in late filing of the
appeals (i.e. FAO No.4069 of 2015 and FAO No.4128 of 2015
respectively) is condoned.

CM Nos.13047–50 CII of 2015&
FAO No.4069 of 2015(O&M)
&
CM No.13279–82 CII of 2015&
FAO No.4128 of 2015(O&M)

[2]

CM No.13048– CII of 2015 in
FAO No.4069 of 2015 (O&M) &

CM No.13280– CII of 2015 in
FAO No.4128 of 2015(O&M)

For the reasons as are mentioned in the applications, the same are allowed. Delay of 21 days in refiling the appeals (i.e. FAO No.4069 of 2015 and FAO No.4128 of 2015 respectively) is condoned.

CM No.13049– CII of 2015 in
FAO No.4069 of 2015(O&M)

Learned counsel for the applicant/appellant does not press the instant application as the same has not been contested by learned counsel for respondent No.1/Insurance Company.

Dismissed as not pressed.

FAO No.4069 of 2015(O&M)
FAO No.4128 of 2015(O&M)

[1] This order shall decide FAO Nos.4069 of 2015 and 4128 of 2015 as the same arise out of two separate awards dated 18.05.2013 (in FAO No. 4069 of 2015) and 31.01.2014 (in FAO No. 4128 of 2015) passed by the learned Motor Accident Claims Tribunal, Palwal (for short – “ the Tribunal”) in respect of two separate claim petitions though pertaining to the same accident.

[2] Facts of the cases are that the claimant/respondent No.2 in FAO No.4069 of 2015 (MVA Petition RBT No.120 of 2011) was travelling from Hodal to Palwal while the claimants/respondent Nos.2 to 5 in FAO No.4128 of 2015 (MVA Petition RBT No.409 of 2009) were

returning to village Kairaka from Hodal in a three wheeler of the appellant bearing registration No.HR-38-P 5981 and the said three wheeler struck against a tree in front of Court premises, on G.T. Road, Palwal as a result of which the claimants/respondents in both the appeals besides other occupants of the three wheeler sustained multiple injuries and one Smt. Mayawati died in said accident and the appellant fled from the spot after leaving his three-wheeler there. Claimant/respondent No.2 in FAO No.4069 of 2015 remained hospitalized and spent a substantial amount on his treatment, therefore he sought compensation on account of injuries suffered by him in a motor vehicular accident while claimants/respondent Nos.2 to 5 in FAO No.4128 of 2015 sought compensation on account of untimely death of Smt. Mayawait who was riding in the offending vehicle. On the basis of pleadings and evidence led by the parties, the learned Tribunal awarded a sum of Rs.29,700/- to claimant/respondent No.2 in FAO No.4069 of 2015 and Rs.4,26,200/- to the claimants/respondent Nos.2 to 5 in FAO No.4128 of 2015 while holding the Insurance Company liable to make payment of compensation to the claimants/respondents in both appeals and to recover the same from the owner in view of decision of Hon'ble the Supreme Court in ***United India Insurance Company Limited vs. Suresh K.K. and another, 2008 (4) RCR (Civil) 907.***

[3] Sole argument of learned counsel for the appellant while relying on the decision of Hon'ble the Supreme Court in ***Lakhmi Chand vs. Reliance General Insurance, 2016 (3) SCC 100*** is that mere overloading of a vehicle and carrying passengers than permissible does

not amount to fundamental breach of the insurance policy especially in view of it not being pleaded in the case by either of the claimants or of the Insurance Company that the accident had taken place on account of overloading. Relevant extract of the aforementioned decision is reproduced as under:-

“18. 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 (supra) 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 the Revision Petition No. 2032 of 2012 is liable to be set

aside, as the said findings recorded in the judgment are erroneous in law.”

[4] Per contra, learned counsel for respondent No.1/Insurance Company contends that the aforementioned decision is of no avail to the appellant in view of decision of Hon’ble the Supreme Court in Suresh K.K.’s case (Supra) as per which a driver of a three-wheeler cannot allow anybody else to share his seat and in case the driver of a three-wheeler allows any person to share the driver seat, the same would amount to violation of the condition of the contract of insurance and the insurance company would not be liable. Relevant extract of the aforementioned decision is reproduced as under:-

“13. If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter in a three-wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is proved.”

[5] In FAO No.4069 of 2015 PW-1, Parveen Kumar admitted that he was riding on the ill fated three-wheeler along with its driver i.e. appellant herein. In the circumstances, the same would amount to violation of the insurance policy and the terms and conditions of the registration certificate in view of the decision in Suresh K.K.’s case (Supra).

[6] The judgment of Hon'ble the Supreme Court in Lakhmi Chand's case (Supra) relied upon by learned counsel for the appellant is not applicable in the facts of the case. Offending vehicle in Lakhmi Chand's case (Supra) was a TATA motors goods carrying vehicle (four-wheeler) whereas in the instant case, the offending vehicle is a three-wheeler and as per the evidence led in both the appeals i.e. in para No.18 of the award in FAO No.4069 of 2015, the claimant/respondent No.2 had admitted in his cross-examination that 6-7 passengers were on board in the offending vehicle as against the sitting capacity of 3+1 while in para No.20 of the award in FAO No.4128 of 2015, PW-1 Smt. Sundri during her cross-examination admitted that 10-12 passengers were on board in the offending vehicle.

[7] To my mind, a three-wheeler with a sitting capacity of 3+1 if carrying more passengers than the permissible limit and that too with one of the passengers in excess of the prescribed limit riding along with the driver, would apart from being contrary to the maximum permissible number of persons, render the vehicle highly unsafe and unmanageable as is evident from the facts of the instant cases which go to speak for themselves as the vehicle dashed against a tree.

[8] Although, it has come in the evidence that the appellant was driving the three-wheeler rashly and negligently and with passengers much in excess of the permissible limit thereby rendering the vehicle unstable and unmaneuverable, more so, on account of the appellant/driver sharing his seat with another passenger. In the circumstances, the decision in Lakhmi Chand's case (Supra) is

distinguishable and is not applicable and in view of decision of Hon’ble the Hon’ble Supreme Court in Suresh KK’s case (Supra), the appellant cannot escape liability.

[9] Accordingly, finding no infirmity in the impugned awards dated 18.05.2013 (in FAO No. 4069 of 2015) and 31.01.2014 (in FAO No. 4128 of 2015) passed by the learned Tribunal, Palwal, the instant appeals are dismissed.

[10] All pending misc. applications also stand dismissed.

15.02.2023
'Amit'

(B.S. Walia)
Judge

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