

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1183-2018 (O&M)

Date of decision: 17.02.2023

The Hoshiarpur Azad Transport Pvt. Ltd.

...Appellant(s)

Vs.

United India Insurance Co. Ltd. & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:-

Mr. Sanjay Gupta, Advocate for appellant.

Mr. Rajneesh Malhotra, Advocate for respondent No.1.

Brig. B.S. Taunque, Advocate for respondent No.4.

Mr. R.K. Arya, Advocate for respondent No.5.

Mr. Munish Gupta, Advocate for respondents
No.6 to 8.

NIDHI GUPTA, J.

Appellant herein is the owner of bus bearing registration No.PB-07-W-5565 (hereinafter referred to as "the offending vehicle") challenging Award dated 04.01.2017 passed by Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as "the learned Tribunal"), in MAC Petition No.102 dated 15.09.2014 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). However, vide the impugned Award, recovery rights have been granted to Respondent No.1/Insurance Company against the appellant on the ground that the offending vehicle was not having valid Fitness Certificate at the time of accident.

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that deceased-Sudesh Kumari had died due to the injuries suffered by her in a motor vehicular accident that took place on 11.07.2014 due to the rash and negligent driving of offending vehicle being driven by respondent No.5 herein. Learned Tribunal awarded compensation of Rs.26,85,080/- along with interest @ 7.5% per annum from the date of filing the petition till its actual realization. The claimants are children of deceased-Sudesh Kumari.

3. a) Learned counsel for the appellant submits that learned Tribunal is in patent error in granting recovery rights to respondent No.1 against him as, not having a valid Fitness Certificate can at best be termed as a traffic offence and does not constitute a ground for grant of recovery rights;

b) It is submitted that under Section 149 of the Act, this was not a defence that was available to respondent No.1;

c) In support of his contention, learned counsel for the appellant relies upon judgment of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Nicolletha Rohatagi 2002 (3) PLR 621*** wherein it has been held as follows:-

“Motor Vehicles Act, 1988, Sections 149(2) and (7), 147 and 170 – Motor Vehicles Act, 1939, Section 110-C(2A) – Liability of insurer – Third party claims – Grounds of defence for insurer –An insurer cannot avoid its liability on any other grounds except those mentioned in sub-section (2) of Section 149 of 1988 Act –Any other breach of conditions by the insurer which does not find place in sub-section (2) will not provide any defence

to the insurer except that the specific permission or directions of the Court for the reasons to be recorded on the grounds of collusion or fraud in terms of Section 170 of the Act – Judgment in United India Insurance Co. Ltd. Vs. Bhushan Sachdeva 2002 (2) RCR (Civil) 66 does not lay down correct law in holding that insurer has a right to take all defences available to insured and failure of insured to appeal amounts to failure to contest giving rise to right to defence of insurer.”

d) It is further submitted that even this Court in case of ***Sunil Kumar Vs. Ram Veer & Others RCR (Civil) 2013 PLR 849*** has held as under:-

“Motor Vehicles Act, 1988, Section 147 – Motor Accident – Insurance – Vehicle driven without permit –Insurance company contended that there was no valid permit or fitness certificate – No defences which shall be allowed for exclusion of liability under terms of Section 149 of Motor Vehicles Act –User of vehicle against the terms of permit will give rise to other consequences of cancellation of permit but shall not avail to insurer a right to be exonerated, unless there were any specific exclusions under terms of policy – Liability should be borne by the Insurance Company – Award modified – Appeal allowed.”

e) It is submitted that it is also pertinent that both respondent No.2 and deceased did not have a valid driving licence at the time of accident. However, learned Tribunal has ignored these very relevant facts.

4. Learned counsel for respondent No.1 Insurance Company submits that there is no error in the impugned Award to the

extent whereby recovery rights have been granted in favour of the Insurance Company.

5. I have heard learned counsel for the parties.

6. Legal position as enunciated in above noted decisions by the Hon'ble Supreme Court in case of ***National Insurance Co. Ltd. Vs. Nicolletta Rohatagi 2002 (3) PLR 621*** and by this Court in case of ***Sunil Kumar Vs. Ram Veer & Others RCR (Civil) 2013 PLR 849*** cannot be denied.

Thus, in respect of cases such as the present one, as has been succinctly and clearly laid down, insurance policy is a contract between the parties and does not provide that in absence of Fitness Certificate Insurance Company would not be liable.

7. Accordingly, present appeal is **allowed** and impugned Award is set aside to the extent whereby recovery rights have been granted to respondent No.1 against the appellant.

8. Pending application(s) if any also stand(s) disposed of.

17.02.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No