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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1502-2009 (O&M)
Date of decision: 16.09.2024

Tilak Raj

...Appellant

Versus

The Bajaj Allianz General Insurance Company Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sanjay Jain, Advocate for the appellant.

Mr. Vipul, Advocate for
Mr. Paras M. Goyal, Advocate for respondent No.1.

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VIKAS BAHL, J. (ORAL)

1. The owner of the Maruti Car bearing registration No.PB-23/D-1830 (hereinafter to be referred as "the offending vehicle") has filed the present appeal challenging the award dated 13.02.2009 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter to be referred as "the Tribunal") to the extent that the right to recover the awarded amount from the owner has been given to the Insurance Company.

2. Brief facts of the case are that one Deepak Kumar who was travelling along with his friend namely Deep Chand in the offending vehicle, had died on account of injuries suffered in a motor vehicular accident which took place on 09.02.2008 involving the abovesaid car.

3. The Tribunal, vide award dated 13.02.2009, had framed the

following issues:-

> *"1. Whether the accident in question took place, as alleged? OPP.*
> *2. If issue No.1 is proved, whether Deepak Kumar died as a result of result of injuries suffered by him in the accident in question. If so, to what amount of compensation the claimants are entitled to and from whom? OPP.*
> *3. Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident? OPR-2.*
> *4. Whether there is violation of terms and conditions of the insurance policy and respondent No.2-Insurance Company is not liable to pay any compensation? OPR-2.*
> *5. Relief."*

4. Under issue No.1, it was observed that the accident in question had taken place in the manner alleged and thus, the said issue was decided in favour of claimants and against the respondents. Under issue No.2, compensation was awarded to the claimants and issue No.3 was decided against the Insurance Company. Issue No.4 was decided in favour of Insurance Company and on account of the said fact, recovery rights were given to the Insurance Company against the present appellant/owner. The sole challenge in the present appeal is to the finding on issue No.4.

5. Learned counsel for the appellant has submitted that under issue No.4, it was wrongly observed that the policy in question did not provide for coverage to a passenger as it was found that the deceased was a gratuitous passenger in the car and was sitting along with the driver of the car. Learned counsel for the appellant has during the course of arguments, handed over the copy of the policy which has been exhibited before the Tribunal as Ex.R1, which is taken on record as Ex.X. The counsel for the respondents has not disputed the veracity of the said document. It has been highlighted that in the

said policy, it has been specifically mentioned that the same was a "Package Policy" and the said policy covers the basic third party liability, PA cover for owner/driver of Rs.2 lacs and "LL to person for operation/maintenance for one person". Further it has also been highlighted that the said policy also had a "total own damage coverage" and total own damage premium was also charged from the policy holder. With respect to "Section II-Liability to third parties", it is stated that the said clause is verbatim the same as the clause in the case of ***Rani Gupta and others Vs. M/s United India Insurance Company Limited and others*** reported as ***2009 AIR (Supreme Court) 3226***. It is submitted that the Hon'ble Supreme Court while interpreting a similar clause had observed that the Insurance Company would be liable to pay compensation with respect to a person who would be travelling in the car without hire or reward. Reference has also been made by the learned counsel for the appellant to the judgment of the Coordinate Bench of this Court in the case titled as ***Oriental Insurance Company Limited Jind Vs. Manjit Kaur and others and other connected case,*** reported as ***2023(3) RCR (Civil) 719*** in support of his arguments. SLP bearing No.19428-19429 of 2023 filed against the said judgment has been dismissed vide order dated 06.09.2023 by the Hon'ble Supreme Court.

6. Learned counsel for the Insurance Company has submitted that the award passed by the Tribunal, particularly the finding on issue No.4 is in accordance with law and the same deserves to be upheld.

7. This Court has heard learned counsel for the parties and has perused the paper book.

8. It is not in dispute that the insurance policy Ex.R1 with respect to

the offending vehicle in the present case is a "Package Policy" and it covers basic third party liability, PA cover for owner/driver upto the extent of Rs.2 lacs, legal liability to person for operation/maintenance for one person and total own damage coverage and the premium with respect to each of the said aspects had been paid by the policy holder.

9. The Coordinate Bench of this Court in the case of ***Oriental Insurance Company Limited*** (Supra) had taken into consideration the law laid down by the Coordinate Bench of this Court in case titled as ***Surinder Kaur Vs. Smt. Rano Devi and others*** reported as ***2016 SCC Online Punjab and Haryana 8111*** in which it was observed that even in case the passenger who was travelling in a private car was a gratuitous passenger, he would be covered within the meaning of "third party policy", if the insurance policy is a "package policy". Further reference had also been made in the said judgment to the judgment passed by the Hon'ble Supreme Court in the case of ***Rani Gupta*** (Supra) and after taking into consideration the law laid down in the abovesaid judgment, it was observed by the Coordinate Bench that once Insurance Company had charged the premium from the insured on account of coverage for third party, it could not escape its liability and that insurance company was liable to pay the compensation to the claimants therein. The said judgment of the learned Single Judge has been upheld by the Hon'ble Supreme Court vide order dated 06.09.2023. No contrary law has been shown to this Court.

10. In the present case, it is not in dispute that the deceased was travelling in the offending vehicle which was involved in the accident and had died on account of suffering injuries in the said accident. It is also not in

dispute that the said deceased was not travelling in the car for hire or reward and was thus, a gratuitous passenger and thus, the law laid down in the abovesaid judgments fully applies to the present case. The finding of the Tribunal under issue No.4 to the effect that the policy would not cover the passenger/deceased is illegal and tantamounts to a misreading of the said policy and also misapplication of the law laid down in the abovesaid judgments and accordingly, the finding of the Tribunal under issue No.4 deserves to be set aside and the said issue No.4 deserves to be decided in favour of the present appellant.

11. Keeping in view the abovesaid facts and circumstances, the present appeal is partly allowed and the award passed by the Tribunal is set aside to the extent that the Insurance Company has been given the recovery rights from the owner/appellant. It has been brought to the notice of this Court that the Insurance Company has already made payment to the claimants and the appellant has made a prayer that the statutory amount to the extent of Rs.25,000/- which is lying with the Registrar of this Court be released to the appellant. In view of the fact that the present appeal is partly allowed, in case the said statutory amount of Rs.25,000/- with respect to the present case is lying with the Registrar of this Court then it would be open to the appellant to receive the same, after moving an appropriate application before the competent authority.

12. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

16.09.2024 **(VIKAS BAHL)**
Pawan **JUDGE**

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