IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-4114-2013 (O&M)

Robin

...Appellant

VERSUS

Reliance General Insurance Company Ltd. and others

...Respondents

(ii) FAO-4128-2013 (O&M)

Robin

...Appellant

VERSUS

Reliance General Insurance Company Ltd. and others

...Respondents

Date of Decision: May 22, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Dheeraj Kumar Narula, Advocate
for the appellant.

Mr.Sanjeev Kodan
for respondent No.1.

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ARCHANA PURI, J.

These are two appeals filed by the appellant-owner of the truck bearing registration No.HR-62-0761 to assail the Award dated 18.03.2013, whereby, compensation was awarded, on account of injuries sustained by three persons, who were occupants of the truck in question, at that time and thereupon, the insurance company was exonerated from the liability to pay the compensation, qua injuries sustained by Hardayal Singh and Dhruv

Singh, in the accident in question.

So far as the factum of accident and manner of taking place of the same as well as the liability, so fastened upon the appellant-owner, qua subject injured is concerned, neither the claimants nor the insurance company, as such, has filed any appeal. Be it noted that the appeal has been filed by the owner of the offending truck, thereby, assailing exoneration of the insurance company to pay the compensation, awarded qua injuries sustained by Hardayal Singh and Dhruv Singh.

In this context, the facts germane, to be noticed, are as follows:-

That, on 04.05.2010, Bhagwan Dass, Hardayal Singh and Dhruv Singh, together with Mahipal, were coming from Ellenabad in a truck bearing registration No.HR-62-0761, after loading tomatoes. The truck was being driven by respondent-Ram Lal and their destination was Delhi. At about 9.30 p.m., when they reached near village Madhosinghana, suddenly a stray cow appeared on the road and Ram Lal lost his control over the truck and it turned turtle to its half extent, as a result of which, the occupants Bhagwan Dass, Hardayal Singh and Dhruv Singh had sustained injuries. They were shifted to Government Hospital, Sirsa. The accident had taken place, on account of aforesaid reason and there was no fault of anyone.

Keeping in view the aforesaid manner of taking place of the accident, three separate claim petitions under Section 163-A of the Motor Vehicle Act were filed by Bhagwan Dass, Hardayal Singh and Dhruv Singh, for seeking compensation, on account of injuries sustained by them.

In pursuance of notice issued, the respondents-driver and owner had filed separate written statement, thereby, though admitting about taking place of the accident, but however, denied about any negligence, on the part of respondent-Ram Lal. However, it was admitted that rapat was lodged regarding the accident in question at police post Mallekana and therein also, it was written that no one was responsible for the accident.

The insurance company had filed separate written statement, thereby, raising preliminary objections to dispute the maintainability of the claim petition as well as cause of action and locus standi and further alleged that the petition is bad for mis-joinder and non-joinder of necessary parties. No accident had taken place in the manner as alleged. Besides the same, various preliminary objections were taken, with regard to respondent-Ram Lal not having driving licence and also regarding fitness certificate as well as route permit of the truck in question.

Also, further it was averred about the truck to be driven in contravention of terms and conditions and limitations to the use of the vehicle prescribed under the policy of the insurance because three passengers were travelling in the alleged truck i.e. goods carrying vehicle, as gratuitous passengers, which amounts to breach of terms and conditions of the insurance policy.

Issues were framed and evidence was adduced. After hearing learned counsel for the parties, learned Tribunal, vide impugned Award, had granted compensation, vis-a-vis, injured Bhagwan Dass, Hardayal Singh and Dhruv Singh. However, while considering Bhagwan Dass to be working as cleaner, the respondents i.e. driver, owner and insurer of the truck in question, were held, jointly and severally, liable to make the payment of the compensation. So far as, compensation worked upon qua injuries sustained by Hardayal Singh and Dhruv Singh is concerned, learned Tribunal had concluded that the insurance company was not liable to pay the amount of compensation and only owner was held liable to pay the awarded amount.

Feeling aggrieved by the exoneration of the insurance company to pay the compensation, vis-a-vis, Hardayal Singh and Dhruv Singh, the appellant-owner has filed the appeals in hand.

In pursuance of the notice issued, learned counsel for the insurance company made appearance.

Learned counsel for the parties heard.

A perusal of the claim petitions indicate that the claimants respectively had specifically pleaded in the claim petitions that on the fateful day i.e. 04.05.2010, Bhagwan Dass along with Dhruv Singh s/o Suraj Ram, r/o Singurappur and Hardayal Singh s/o Des Raj, r/o village Gadhi Kadarganj, District Kashri, who are traders and one labourer Mahipal s/o Jagdish r/o Lodha Gaon Singurapur, District Farukhabad, were coming from Ellenabad in a truck bearing registration No.HR-62-0761, after loading tomatoes. Therein, they had also stated about Dhruv Singh and Hardayal Singh to be traders and the said truck was being driven Ram Lal s/o Lekh Ram and further, that their destination was Delhi. Furthermore, the manner of taking place of the accident, as such was pleaded. The specific pleading contained in paragraph No.10 of the claim petition, was admitted by respondents-driver and owner, in their reply. It was the categoric stand taken that the contents of paragraph No.8 to 13 of the claim petition, are admitted to be correct, but however, they took the plea that the accident had taken place, all of a sudden, per chance.

So far as, the insurance company is concerned, paragraph No.10 of the claim petition, as such, had not been specifically denied. The alleged occurrence was generally denied. There is no averment in the reply by the insurance company that the insurance company is not liable because the claimants were never travelling in the vehicle along with the goods as owner or as a labourer. The reply of the insurance company is silent on this aspect, though, in a vague manner, it has been stated that three passenger were travelling as gratuitous passengers in the offending truck, which amounts to breach of terms and conditions of the insurance policy.

Such being the pleadings, now, adverting to the evidence, brought on record, it should be noted that Bhagwan Dass, who, undisputedly was the cleaner of the truck in question, had stepped into witness box as PW-3. His sworn testimony, in the form of affidavit is Ex.PW3/A. Therein, he had categorically stated that on 04.05.2010 i.e. the date of accident, he was travelling in the truck bearing registration No.HR-62-0761, in the capacity of being conductor and also further, categorically deposed that Dhruv Singh s/o Suraj Ram and Hardayal Singh s/o Lekh Raj, traders together with one labourer Mahipal s/o Jagdish, after loading tomatoes, in the truck in question, had proceeded from Ellenabad towards their destination at Delhi. Even, while facing cross-examination, he had categorically stated about himself along with 4-5 businessmen, sitting with the driver in the cabin. He further named those persons, which also included Hardayal Singh and Dhruv Singh, besides himself. He also categorically stated in the cross-examination that he was the conductor of the truck. He also denied a suggestion that he was sitting in the truck as gratuitous passenger, after paying the fare. No such suggestion has been given to him, with regard to manner of Dhruv Singh and Hardayal Singh, being occupants of the truck in question. Not only this, even, Dhurv Singh had stepped into witness box as PW-1 and his affidavit is Ex.PW1/A. Therein, also he has categorically deposed on similar lines, with regard to himself being the occupant of the truck in question, together with Hardayal Singh, Mahipal and Bhagwan Dass. He further deposed about loading of the tomatoes in the truck in question and having proceeded towards Delhi. He further deposed about manner of taking place of the accident.

This witness also, in cross-examination had categorically stated that prior to the accident, he used to supply the vegetables and stated about his monthly earnings. With regard to the cross-examination conducted at the behest of the insurance company, he has categorically denied a suggestion put that he was sitting in the truck in question as gratuitous passenger, after paying the fare. Further, it has also come in his cross-examination that tomatoes were purchased and loaded from Ellenabad sabzi mandi and were to be delivered at Delhi. He also deposed about knowing Bhagwan Dass, conductor of the truck in question, who was of his village and on this account, they had hired the truck. A suggestion was given about this witness to be not a trader/businessman, at the relevant time and the same was categorically denied. A suggestion was also denied about himself to be projecting to be trader/businessman in collusion with respondent-Ram Lal, just to grab the money.

Furthermore, Hardayal Singh, another injured, stepped into witness box as PW-4 and his affidavit, Ex.PW4/A is also in consonance with the affidavit, filed at the instance of Dhruv Singh and he has also deposed on similar lines, thereby, giving the manner of his being the occupant of the truck in question. His cross-examination was also conducted on similar lines and the same suggestions were put, which were categorically denied by this witness.

Furthermore, PW-2 EHC Shankar Lal of Police Post Mallekan was examined, who had proved the rapat No.17 dated 06.05.2010, which is Ex.PA. This was got registered at the instance of Bhagwan Dass, after the accident in question. Therein, Bhagwan Dass had categorically stated about the accident to have taken place per chance, on account of stray cattle, having come in front of the truck in question. However, in the opening lines of his statement, on the basis whereof, he got recorded the DDR, he had categorically stated about himself to be the occupant of the truck in question, in the capacity of being conductor and further, also deposed about Dhruv Singh as well as Hardayal Singh traders, together with one Mahipal, labourer, to have got loaded tomatoes in the truck, at Ellanabad and further proceeded towards Delhi. In the further statement, he has deposed about the manner of taking place of the accident, which is not, as such, disputed in the present appeals.

Very true, as now pointed by learned counsel for the insurance company and as observed by learned Tribunal that the bills regarding the purchase of tomatoes were not produced by the aforesaid witnesses, but however, it matters not much. Even, if the bills have not been produced, then also, on the basis of the pleadings and the oral evidence, brought on record, more particularly, in view of the suggestion having not been given about the claimants to be the traders, it stands established that on the date of accident, the claimants were travelling in the truck in question, along with their goods (tomatoes) and a labourer and they had proceeded to Delhi for selling the same. In the given circumstances, learned Tribunal had erroneously concluded about the claimants, having failed to prove about themselves to be travelling in the capacity of being traders/guards of the goods. This finding of learned Tribunal is not supported by satisfactory evidence. Rather, the depositions of both the claimants as well as Bhagwan Dass, who was conductor of the truck in question, has been overlooked by learned Tribunal.

Section 147(1) (b) (I) covers the liability in respect of death or bodily injury to any persons, including owner of the goods or his authorised representative carried in the vehicle. In this regard, beneficial reference is made to decision rendered in Amrutbai and others vs. Jabbar and others, 2010 ACJ 2336, wherein, the liability was fastened upon the insurance company, vis-a-vis, the death of a person, who was accompanying the vegetables, carried in vehicle in question, at the relevant time of accident. In this context, paragraph No.12 of the aforesaid judgment, is reproduced, in verbatim, as herein given:-

> *"12. Section 147 (1) (b) (i) covers the liability in respect of the death or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle. The Supreme Court in the matter of* ***National Insurance Co. Ltd. v. Baljit Kaur, 2004 ACJ 428 (SC)****, has held that term 'any person' included in section 147 (1) by way of amendment in 1994 includes a third party as also the owner of goods or his authorised representative carried in a goods vehicle. Following*

the judgment of the Supreme Court in the matter of ***Baljit Kaur (supra)****, Division Bench of this court in the matter of* ***Kesari Bai v. Dhanna, 2007 ACJ 1550 (M.P.)****, held the insurance company liable in the case of death of person travelling in goods vehicle along with his bag of wheat when the vehicle met with an accident. The Division Bench of this court in the matter of* ***Umrao Singh v. Bharatlal, 2007 (II) MPWN 108****, held the insurance company liable to pay compensation to the claimants travelling in trolley with his goods. In somewhat similar circumstances the Division Bench of this court in the matter of* ***Indarlal v. Vijay Kumar, 2009 ACJ 1077 (M.P.)****, held the insurance company liable in case of death of passenger in Matador, who was travelling with his load of vegetables."*

Furthermore, though learned Tribunal had made reference to the cover note, but however, the insurance policy has been proved as Ex.RA, which reflects in the column of LLC i.e. licenced carrying capacity) as '4' and viewed from this angle also, two more persons were covered, other than the driver and conductor/cleaner. Considering the same, the insurance company, as such, could not be absolved from its liability to pay the compensation, awarded on account of injuries sustained by the claimants, in the capacity of being traders, accompanying their goods, at the relevant time.

In the light of the aforesaid observations, both the appeals, as such, are hereby allowed and consequently, the liability of respondent No.1-Reliance General Insurance Company Ltd., is held to be joint and several together with the owner of truck bearing registration No.HR-62-0761.

May 22, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned	**Yes**
Whether reportable	**Yes/No**