201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1276-2001
Date of Decision:27.03.2026

NEW INDIA ASSURANCE CO. LTD.

.....Appellant

VERSUS

ROHTASH AND OTHERS

.....Respondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Paul S. Saini, Advocate
for the appellant.

Mr. Kunal Phogat, Advocate
for respondent No.1.

Respondents No.2 to 3 already ex parte
before the Tribunal.

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<u>YASHVIR SINGH RATHOR, J. (ORAL)</u>

1. This appeal has been instituted by the Insurance Company against the Award dated 15.01.2001 vide which a sum of Rs.45,000/- has been awarded as compensation to claimant/respondent No.1 on account of injuries suffered by him in an accident which took place due to rash and negligent driving on the part of respondent No.2 while driving offending vehicle bearing No.HR-36-A-7755, owned by respondent No.3 and insured with the appellant-Insurance Company. However, Insurance Company has been held liable to pay the amount of compensation to the claimant jointly and severally along with respondents No. 2

and 3, i.e. driver and owner of the vehicle, who were already ex parte before the trial Court. However, learned counsel for respondent No.1 has appeared.

2. I have heard learned counsel for the appellant as well as respondent No.1 and have gone through the material on the file.

3. At the very outset, it is pertinent to mention that the record of the present appeal as well as Tribunal has got burnt in a fire incident in the High Court. However, another claim petition bearing MACT Case No.25 dated 20.02.1997 titled *Zile Singh and Another Vs. Ajay Kumar and others* was instituted by the legal representatives of Chhotu Ram, who had died in this very accident, regarding which FIR No.20 dated 13.01.1997 under Section 279 and 337 of IPC, Police Station Sadar, Rewari was registered. The said claim petition was decided vide award dated 21.08.1999 and against the said award, FAO No.3534 of 1999 was instituted, which was disposed of by a Co-ordinate Bench of this Court vide judgment dated 27.03.2014. Photocopy of the record of the Tribunal in the said claim petition has been requisitioned as it contains some documents, which are relevant to the present case. Accordingly, the present appeal has to be decided on the basis of observations and findings given in the award dated 21.08.1997 and the documents annexed in the record received in claim petition No.25 of 1997 in FAO-3534-1999.

4. Learned counsel for the appellant argued that the insured has violated the terms and conditions of the insurance policy. The vehicle in question was meant for private use but at the time of accident, it was being used for commercial purposes. More than 20 passengers were being carried in the said vehicle on

payment of fare at the time of accident and as such, there was violation of terms and conditions of the insurance policy but the Tribunal has ignored this fact and has held the insurance company liable to indemnify the insured despite the fact that there was overwhelming evidence in this regard on the file. Learned counsel prayed that insurance company be absolved of its liability to indemnify the insured.

5. On the other hand, learned counsel for respondent No.1 argued that the award in question is well reasoned and justified and no interference in the same is called for and appeal in hand be dismissed.

6. At the very outset, it is pertinent to mention that in the present claim petition, FIR was led in evidence as Ex.P1 and in the connected claim petition, it was led as Ex.PA and its perusal shows that the same was lodged on the statement of one Jagdish Parshad son of Parbhati Lal wherein he alleged that he is a mason by profession and for the last 15-20 days, he had gone to village Joniawas for doing some job. On 13.01.1997 at about 05.00 PM, he along with Ami Chand, resident of Kishanpura, who was a labourer with him, boarded Jeep No.HR-36-A-7755 (offending vehicle) from Joniawas bus adda for going to Rewari, in which 20/21 passengers were travelling. The passengers were hanging outside the body of the jeep and the jeep was being driven at a high speed and in a rash and negligent manner by its driver and when the jeep reached near village Hansaka, driver started driving it in a zig-zag manner and when he applied the brakes, the jeep turned turtle, resulting in the injuries to several passengers. As such, from the

contents of the FIR itself, it is apparent that the passengers were being carried in the jeep.

7. In the present claim petition, the author of the FIR namely Jagdish Parshad was examined as PW1 and certified copy of his statement recorded in the present claim petition was tendered in evidence in the second claim petition titled Zile Singh and Another Vs. Ajay Kumar and others as Ex.R2 and photocopy of the certified copy is available in the summoned record. PW1 Jagdish Parshad deposed that on 13.01.1997, he was coming from Joniawas to Rewari in Jeep bearing No.HR-26-A-7755 in which several passengers were travelling. The jeep was being driven at high speed and in a rash and negligent manner and when it reached near village Hansaka**,** the jeep turned turtle when the driver applied brakes and several passengers including him, Rohtash (present claimant) and Chhotu Ram suffered injuries. During cross-examination, he admitted that they had paid Rs.5/- each as fare to the driver of the jeep for travelling in the said jeep but no tickets had been issued to them. As such, from his testimony, it is established that the passengers had paid fare to the driver for travelling in the said jeep. The said vehicle is not a commercial vehicle to be used as a taxi and it is a private vehicle. The owner has thus violated the terms and conditions of the insurance policy by transporting the passengers for hire and reward. However, learned Tribunal has not adverted to this part of the evidence led by the Insurance Company and grave illegality thus have been committed while holding the insurance company liable to indemnify the insured despite violation of terms and conditions of the insurance policy. Accordingly, it is held under issue No.3 that the insurance company is not

liable to indemnify the insured/owner and it is only respondents No.1 and 2, who are liable to pay compensation to the claimant jointly and severally. However, Insurance Company shall be liable towards third party i.e. claimant and shall pay the compensation and satisfy the award but will have a right to recover the awarded amount from the insured without filing a separate suit.

8. As a result of aforesaid discussion, the appeal in hand is accepted with costs and the award dated 15.01.2001 is modified to the effect that insurance company is not liable to indemnify the insured and it is only respondents No.1 and 2, who are liable to pay compensation jointly and severally. However, Insurance Company shall first satisfy the award and pay the enhanced compensation as awarded by the Tribunal and thereafter, it shall have a right to recover the awarded amount from the owner/insured along with interest @ 6% per annum from the date of deposit till realization without filing a separate suit.

9. Pending misc. application (s), if any, shall also stand disposed of.

(YASHVIR SINGH RATHOR)
JUDGE

March 27, 2026
Priyanka Thakur

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No