2025:PHHC:034833

FAO-1348-2007

215-1 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-1348-2007
Date of Decision: -07.03.2025

NATIONAL INSUR. CO. LTD.

.....Appellant

Vs.

ASHOK KUMAR AND ORS.

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. R.C. Kapoor, Advocate
for the appellant-Insurance Company.

Mr. Ajit Sihag, Advocate
for the respondents (Driver and owner).

Mr. Tara Chand Dhanwal, Advocate
for the respondent/claimant.

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SUDEEPTI SHARMA J.

1. The instant appeal has been preferred by the Insurance Company for setting aside the award dated 18.12.2006 passed by the learned Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal'), whereby, the claimant was awarded compensation and appellant/Insurance Company was held liable to pay compensation jointly and severally.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 22.5.2005 at about 6:30 pm the claimant-Ashok Kumar, Sona Devi and Matri @ Sharda were coming back from village Kungar after finishing their work in order to go to their home in Bawanikhera in Tata 407 bearing no HR-38A-9426 alongwith one unknown person. The said vehicle was being driven by driver namely Maha Singh in a rash

and negligent manner. The claimant and others occupants of the vehicle requested the driver to drive the same at a slow speed but the driver did not pay any heed to their request. When the vehicle reached near Sunrise School on Bawanikhera pur road on the turning-point, the above said vehicle all of sudden turned turtle because of rash and negligent driving of respondent no.1 and the persons travelling therein sustained fatal and serious injuries on their various parts of the body and unknown passenger travelling in the vehicle died at the spot. The claimant and remaining occupants of the vehicle were removed to General Hospital, Bhiwani, where, First Aid was given to them, but because of serious condition of the occupants, they were referred to PGIMS, Rohtak where they remained admitted. The factum of accident was reported to the police whereupon FIR No. 76 dated 23.5.2005, under Sections 279, 337, 338 & 304-A, IPC was registered against the respondent No.1 at Police Station Bawanikhera.

3. Upon notice of the claim petition, respondents appeared, filed their written reply by denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> *"1. Whether the accident which occurred on 22 5 2005 causing injuries to Ashok Kumar son of Shyam Dass, Sona wife of Lila and Matri@ Sharda wife of Mahender occurred due to rash and negligent driving of respondent no 1, Maha Singh son of Jot Ram while driving TATA 407 No. HR-38A-9426, as alleged? OPP*
>
> *2. If issue no 1 is proved, whether the petitioners are entitled for compensation, if so to what amount and from whom? OPP*
>
> *3. Whether the petitions are not maintainable in the present form? OPR*

4. Whether the petitioners have no locus-standi and cause of action to file the petitions? OPR

5. Whether the insured has violated the terms and conditions of the Insurance policy, if so, to what effect? OPR

6. Whether the driver of the offending vehicle was not holding a valid driving licence on the date of accident? OPR No. 3.

7. Relief"

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal allowed the claim-petition and appellant-Insurance Company was held liable to pay the compensation to the claimants. Hence the appellant- Insurance Company filed the present appeal for setting aside the liability to pay the compensation.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES.

6. Learned counsel for the appellant-Insurance Company contends that the claimants were travelling as gratuitous passengers in goods carrying vehicle, therefore, learned Tribunal has erred in holding Insurance Company liable to pay the compensation to the claimants.

7. Per contra, learned counsel for the respondents submits that the award has rightly been passed. They further submits that burden of proof lies upon the appellant-Insurance Company to establish that the claimants were travelling as gratuitous passengers. They further contends that appellant-Insurance Company failed to adduce any evidence in support of its case, therefore, learned Tribunal has rightly held Insurance Company liable to pay the compensation. Therefore, they pray for dismissal of the present appeal.

8. Before proceeding further, it is necessary to reproduce the relevant portion of the award of the learned Tribunal:-

"22. The burden of providing these issues was upon the respondent no.3 but it has led no evidence on the file. However, Insurance Company has placed on the file Ex. R1 copy of Insurance Policy, Ex. R3 copy of driving licence, Ex. R2 verification report which confirms on the file that respondent no 1 was holding a valid and effective driving licence on the date of accident which is duly verified by the Insurance company. If that is so, issue no. 6 certainly goes against respondent no. 3 which establishes on the file that respondent no. 1 was holding a valid and effective driving licence on the date of accident.

23. Now question arises whether owner/insured has violated the terms and conditions of the Insurance Policy. In this connection, learned counsel for the Insurance Company has argued that claimants were traveling in a vehicle meant for goods carrier, therefore, Insurance company is not liable to pay compensation to the passengers especially gratuitous passengers and liability to pay the amount of compensation should be upon the owner of the vehicle and while arguing so, reference has been made to the law contained in 2005(1) Latest Judicial Reports, case captioned Parmod Kumar Versus Mushtan Begum.

On the other hand, learned counsel for the respondents no 1 & 2 has refuted the above said submission and has contended that it was a duty of the Insurance Company to prove that the vehicle in question was meant for goods carrier and the passengers were travelling as a gratuitous passengers. But the Insurance Company has led no evidence on the file to prove this fact, so the Insurance Company cannot derive any benefit from the law cited by it which is not disputed. Rather, it is urged that respondent no 1 who appeared as RW1 has categorically pleaded in the written statement that the claimants were travelling in the vehicle being related to the owner of the goods and they were labourers, who were taken to unload the wooden

logs at its destination and were not gratuitous passengers. It is further urged that even RW1 while appearing in the witness-box has confirmed this fact and has proved on the file that present claimants were not gratuitous passengers. He has made reference to the facts mentioned in para no.24 of the written statement as well as statement of RW-1 and have corroborated that owner and driver has not committed any flaw and violated the terms and conditions of the Insurance Policy, therefore, Insurance company-respondent no 3 cannot be absolved from making payment of compensation to the petitioners and is bound to indemnify the insured in the instant cases

24. I have given my considerable thought to the rival submissions raised before me. It is a settled proposition of law that burden is heavy upon the Insurance Company to prove that the claimants were traveling as gratuitous passengers and it has to lead evidence to substantiate its plea that the petitioner/claimants were gratuitous passengers and did not labourers at the time of accident and if there is no evidence on the file to this effect the Insurance Company is certainly held liable to pay the amount of compensation. While observing so, I am fortified with the law contained in 2006(1) Accidents Compensation Judicial Reports case captioned Ramesh Chand Versus New India Assurance Co. Ltd and others, page 216, wherein while interpreting Section 147 of the Motor Vehicles Act, 1988 regarding liability of insurer, it is held that it was incumbent upon the Insurance Company to have led evidence to substantiate the plea of deceased being a gratuitous passenger and not a labourer at the time of accident and when there is no evidence the effect is that the Insurance Company is liable to pay the amount of compensation. Even another authority of law contained in AIR 2006(1) Kar R page 197 case captioned New India Assurance Company Versus DY. Narayan Swami and ors

wherein it has been held that deceased had hired lorry and was transporting and load sand was also traveling with said sand load, the deceased cannot be said to be an unauthorized passenger, the accident occurred prior to 1994 amendment, deceased falls under category of non-fare passengers in view of tariff regulations and insurer cannot avoid liability. Law to that extent is clear in a case AIR 2006(NOC), 855(Kant.) in a case 'Maruthi Ramachandra Kumbar Vs Manohar Kallappa Chougale and others, where six passengers were traveling instead of three, liability of insurer is to satisfy only three of highest claims, equity however demands that persons, who have received highest compensation shall have to donate eguitable percentage of compensation to other claimants who have no right to recover compensation from insurer Law dited by the Insurance Company is not disputed but in the facts and circumstances of the instant case the same is neither attracted nor helpful to the insurance Company because Insurance Company has failed to prove by leading cogent, relevant and admissible evidence that the claimants were traveling in the vehicle as gratuitious passengers. The Insurance Company cannot take benefit from the weakness of the claimants. It has to stand independently on its own legs Respondent no 1 has established on the file that claimants were traveling in the vehicle as a labourers after unloading the wooden logs, therefore I am of the view that the Insurance Company gets no help from the law cited in view of the ratio of law discussed above. Since the Insurance Company has failed to prove that claimants were gratertous passengers, therefore, it cannot escape from the liability to pay the law discussed ab Bunt of compensation in the instant petitions in view of the Even otherwise, Insurance Policy Ex. R1 reveals that Insurance Company has received premium of three employees W.C. So. considering the totality of above discussion, I am of the view

that respondent no.1 being driver, respondent no.2 being owner and respondent no.3 being insurer of Tata 407 bearing registration no. HR-38A/9426 are jointly and severally liable to make the payment of mount of compensation to the claimants Hence. issue no. 5 & 6 are answered against the Insurance Company."

9. A careful examination of the impugned award reveals that the learned Tribunal has rightly held the appellant-Insurance Company liable to pay compensation to the claimants, as appellant-Insurance Company has failed to discharge its burden of proving that the claimants were travelling in the offending vehicle as gratuitous passengers.

10. It is a well-settled preposition of law that when an insurer seeks to repudiate liability on the ground that the victims were unauthorized occupants, the burden of proof lies squarely on the insurer to substantiate such a plea with cogent and admissible evidence. In the absence of such evidence, the insurer cannot evade its statutory liability under the Motor Vehicles Act, 1988.

11. The learned Tribunal, after a thorough appreciation of the pleadings and evidence on record, correctly held that the claimants were not gratuitous passengers but were travelling in the vehicle in their capacity as labourers engaged in the unloading of wooden logs.

12. Maha Singh, the driver of the offending vehicle, appeared as RW1 and categorically deposed that the claimants were accompanying the goods and were related to the owner of the goods. His testimony, which remained unimpeached during cross-examination, was consistent with the written reply, wherein, it was explicitly pleaded that the claimants were labourers and not unauthorized

passengers. The Tribunal, relying on this unimpeachable testimony, rightly concluded that the insurer had failed to establish its defence.

13. It is a trite principle in law that an insurer cannot rely on the weakness of the claimants' case but must independently prove its defence. The Insurance Company, despite having the opportunity, failed to lead any evidence to rebut the testimony of RW1-Maha Singh or to establish that the vehicle was being used in contravention of the terms of the insurance policy.

14. In the light of the foregoing discussion, it is evident that the learned Tribunal has correctly held the Insurance Company liable to pay compensation. The findings are based on sound legal reasoning and a proper appreciation of evidence. Consequently, I find no infirmity in the award rendered by the Learned Tribunal. The same is hereby affirmed.

15. The present appeal is therefore dismissed being devoid of any merit.

16. Further Insurance Company is directed to disburse the current schedule fees to Mr. R.C. Kapoor, Advocate, within a period of twenty days from the date of receipt of certified copy of this order, in view of order dated 18.07.2024 passed by this Court in FAO-1682-2007.

17. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

07.03.2025
mahima

Whether speaking/non-speaking : Speaking
Whether reportable : Yes