

**(2010) 11 P&H CK 0640**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** F.A.O. No"s. 329 of 2008 and 733 of 2009

Oriental Insurance Company Ltd.

APPELLANT

Vs

Guddi Devi and Others

RESPONDENT

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**Date of Decision:** Nov. 10, 2010

**Citation:** (2011) 162 PLR 200 : (2011) 3 TAC 269

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

K. Kannan, J.

The Insurance Company who has been directed to satisfy the award of the claimants and recover the same against the owner is on appeal, challenging liability in the first place on the ground that the deceased was a gratuitous passenger and there was no insurance cover available for the death arising out of the accident. The owner of the vehicle himself is in appeal in FAO 733 of 2009, contending that the vehicle had been stolen at the relevant time of the accident and he had not employed the vehicle for carrying passengers in the goods carriage and there had been no violation of terms of the policy to avail to the insurer a right of recovery after satisfying the award.

2. That the vehicle involved in the accident is a goods carriage is not in dispute. The passenger who died was a gratuitous passenger in a goods carriage is also not in dispute. If the owner of the vehicle could establish that there had been a theft of the vehicle then the insurance company cannot take a plea of violation of terms of the policy and the insurer would become liable for a claim irrespective of whether there had been an user of the vehicle, contrary to the terms of use or not. The crucial issue therefore, is whether the vehicle had been stolen in the manner contended by the owner of the vehicle.

3. The accident had taken place on 14.11.2001 at 8:30 p.m. The driver of the vehicle was said to be one Rajesh who was arrayed as first Respondent. It was however, contended that at the particular time when the accident took place one Mahavir was shown to be a driver and a criminal case had also been registered against him and one Rajinder Singh was cited as a party in the petition. The owner of the vehicle Satyawar was cited as fourth Respondent in the petition. The contention of the claimant, who was the widow, was that Mahavir and Rajinder Singh who were nephews of the driver Rajesh had called the deceased from the house and they were going together in the truck when the accident had taken place. The petition adopts the defence taken by the fourth Respondent owner that the vehicle had been reported to be stolen on 15.11.2001 in the morning and he gave a complaint that when the vehicle had remained parked near the driver's house (Rajesh house) the vehicle had been stolen on the previous night and that after investigation it was revealed that the accident had taken place in previous night. Rajinder Singh, Mahavir Singh as well as one Krishnan had all been examined and they gave evidence to the effect that they were not in any way involved in the accident and the owner Satyawar had connived that the driver Rajesh and made a false story as though Mahavir and Rajinder Singh were involved in the accident. According to them, they had no connection with the accident and they did not even know that an accident had taken place. Satyawar had himself given evidence to the effect that his driver Rajesh had informed him only subsequently on 15.11.2001 that the vehicle had been stolen and the accident had not taken place when Rajesh was in charge of the vehicle. If this evidence has been supported by the evidence of the driver himself, it would have brought credit to his own version. Satyawar merely had an explanation to give that Rajesh had gone away to Maharashtra and therefore, he was not able to give evidence. The non examination of Rajesh in my view is crucial. His evidence could have gone to discredit the value of evidence led through Mahavir, Rajinder Singh and Krishnan, all of whom had stated in unison that it was Rajesh who was driving at the relevant time. I cannot accept plea on behalf of the owner that he had gone away to Maharashtra, therefore, he could not be examined. I have seen through the records and nothing is brought out that Satyawar had even made any effort to secure the attendance of Rajesh to cite him as witness in the case.

4. If the whole case was to be examined in the light of evidence that was brought before the Tribunal against the evidence of Mahavir, Rajinder Singh and Krishnan, there was only a denial by the owner Satyawar who had an axe to grind and whose evidence again was hardly to displace the weight of evidence of the other witnesses. Their evidence must have been successfully impeached only by Rajesh himself. If he had been so examined, it will be only a lame excuse that Rajesh was unavailable at the time of trial and therefore, he could not be examined. Learned Counsel appearing for the owner makes a plea that he would move an application for examination of Rajesh, at this Court. I cannot accede to such a plea at the far end of

the hearing of the case. If the owner had shown his evidence and they were really justifiable reasons for the non production of the evidence at the trial, the attempt must have been atleast at the time when the appeal was filed before this Court and not at the time when the arguments were advanced and when the judgment was about to be dictated.

5. If the user of the vehicle had been for the purpose for which it was not permissible for goods carriage by allowing a gratuitous passenger to travel in the same, the inevitable consequence is that an insurer cannot be made liable for the claim arising out of such an accident.

6. The appeal by the Insurance Company i.e. FAO No. 329 of 2008 pleads for exclusion of liability is therefore allowed. The appeal by the owner i.e. FAO No. 733 of 2009 seeking for indemnity from the insurer is rejected and the appeal by the owner is dismissed. There shall be no direction as to costs.