
(2010) 02 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 5386 of 2009 (O and M)

Ashish Mehta

APPELLANT

Vs

Baljeet Singh and Others

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(2), 147(5), 166

Citation : (2011) ACJ 1832

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Kumar Sharma, J.—This appeal, by the owner, is directed against the award dated 28.7.2009, passed by the learned Motor Accidents Claims Tribunal, Hisar, vide which the claim petition filed by the claimant u/s 166 of the Motor Vehicles Act stands allowed.

2. The claimant sought compensation on the pleadings that on 26.10.2005 the claimant had parked his jeep No. DL 2C-D 7491 near the STD of Baljeet at village Surewala Chowk, Narwana. Jasbir Singh, r/o Hasangarh, also parked his motor cycle Hero Honda Splendour behind it at some distance. A Trax bearing registration No. HR 20-H 8825 was also parked on the side of the road. At about 8 a.m., a truck bearing registration No. HR 62-8896 loaded with jiri came from Uklana side, which was being driven by Subhash, respondent No. 1, in a rash and negligent manner. While taking a turn at fast speed, he lost control of the truck and hit the parked Trax. Satpal, driver of Trax, suffered injuries and thereafter truck turned turtle and fell on the motor cycle as well as the jeep No. DL 2C-D 7491. It was, thus, claimed that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No. 1. F.I.R. was registered qua this accident at Police Station Uklana, vide F.I.R. No. 210 dated 26.10.2005. The claimant had claimed compensation of Rs. 2,00,000 (rupees two lakh) along with interest at the rate of 18 per cent from the respondents.

3. The claim petition was contested by respondent Nos. 1 and 2 as also the insurance company.

4. The insurance company contested the claim on the plea that the offending vehicle was being driven in contravention of the terms and conditions of the insurance policy, and the driver of the offending vehicle also did not have a driving licence at the time of accident. It was also pleaded case of the insurance company that the liability of the insurer was limited up to Rs. 6,000 (rupees six thousand), as per section 147(2)(b) of the Motor Vehicles Act. Other arguments on merit were also denied.

5. The learned Tribunal, on appreciation of evidence, recorded the finding, that the accident resulting in damage to jeep No. DL 2C-D 7491 took place due to rash and negligent driving of truck No. HR 62-8896, by respondent No. 1. The claimant for the damage caused was held entitled to compensation of Rs. 1,21,009 (rupees one lakh twenty-one thousand and nine), along with interest at the rate of 7 per cent per annum, from the date of filing of the claim petition till realization. It was also held that the petition filed by the claimant was held to be maintainable being not collusive between the claimant and respondent Nos. 1 and 2. Respondent No. 1 was held to be having a valid driving licence at the time of accident. While granting relief, learned Tribunal invoked the provisions of section 147(2)(b) of the Motor Vehicles Act to restrict the liability of the insurance company to Rs. 6,000 (rupees six thousand).

6. The learned counsel for the appellant contends that the impugned part of the award, vide which the liability of the insurance company has been fixed at Rs. 6,000 (rupees six thousand), is the outcome of misreading of documentary evidence, i.e., insurance policy taken out by the appellant, which was exhibited as Exh. R4.

7. The learned counsel for the appellant referred to the policy showing that under the policy, the liability of insurance company fixed was Rs. 7,50,000 (rupees seven lakh and fifty thousand). The terms of the insurance policy read as under:

Limits of liability:

Under section II-I (i) in respect of any one accident: As per Motor Vehicles Act, 1988

Under section II-I (ii) in respect of any one claim or series of claims arising out of one event: Rs. 7,50,000.

8. The learned counsel for the appellant also brought to the notice of this court the India Motor Tariff. Under the India Motor Tariff, liability for third party, in case of commercial vehicle, is mentioned as under:

12-A. Limits of liability for third party-

(a) u/s II-I (i) of the Package Policy

(Under section I (i) of the Liability Only Policy)

As per requirement of the Motor Vehicles Act, 1988

(b) u/s II-I (ii) of the Package Policy

Rs. 1lakh for motorised two-wheelers and Rs. 7.5lakh for others or

(Under section I (ii) of the Liability Only Policy)

Rs. 6,000, where the proposer/insured opts to limit the TPPD liability to the statutory limit of Rs. 6,000. Endorsement IMT-20 is to be used.

N.B. 1. The limit under 12-A (b) above is in respect of any one claim or series of claims arising out of one event/occurrence.

N.B. 2. If at the insured's option, the expiring TPPD cover stands limited to the statutory limit of Rs. 6,000, an additional premium of Rs. 50-150 and Rs. 200 for motorised two-wheelers, three-wheelers/taxis and other commercial vehicles respectively is to be charged for changing the TPPD cover to Rs. 1 lakh or Rs. 7.5 lakh, as applicable, on renewal.

9. The contention of the learned counsel for the appellant was that whole of the liability of compensation was required to be fixed as joint and several and could not be limited to Rs. 6,000 (rupees six thousand) u/s 147(5) of the Motor Vehicles Act.

10. Mr. Suvir Dewan, learned counsel appearing on behalf of the insurance company, however, vehemently contended that the award passed by the learned Tribunal is in consonance with the provisions of the Act. He referred to section 147 of the Motor Vehicles Act to contend that under the provisions of the statute, the liability with regard to damage to any property of third party is limited to Rs. 6,000 (rupees six thousand).

Section 147(2) of the Motor Vehicles Act reads as under:

147. Requirements of policies and limits of liability.-

xxx xxx xxx

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of

such policy whichever is earlier.

11. On consideration, I find force in the contentions raised by the learned counsel for the appellant. Section 147(2)(b) of the Motor Vehicles Act is subject to section 147(5), which reads as under:

147. Requirements of policies and limits of liability.-

xxx xxx xxx

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

12. Once it was proved on the record showing that the liability of the insurance company was to the tune of Rs. 7,50,000 (rupees seven lakh and fifty thousand), the provisions of section 147(2)(b) could not be invoked to hold that the liability of the insurance company was limited to Rs. 6,000 (rupees six thousand), as held by the learned Tribunal.

13. Consequently, this appeal is allowed, the impugned part of the award, limiting the liability of the insurance company, is set aside, and the liability for payment of compensation to the claimant is held to be joint and several.

14. The amount deposited by appellant shall be paid to the claimant. However, the appellant would be at liberty to claim this amount from the insurance company, as the insurance company is bound to indemnify the insured.