(1991) 04 P&H CK 0123

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 856 of 1989

Baldev Singh and Another — APPELLANT

Vs

Smt. Vidya Devi and Another — RESPONDENT

Date of Decision : 04-04-1991

Acts Referred:
Motor Vehicles Act, 1939 — Section 95

Citation : (1993) ACJ 938 : (1993) 103 PLR 714

Hon'ble Judges : K.P. Bhandari, J

Bench : Single Bench

Advocate : Munishwar Puri, for the Appellant; R.S. Sangwan, for the Respondent

Judgement

K.P. Bhandari, J.—This judgment will dispose of F. A. O. Nos. 856 and 857 of 1989 as common questions of law and Facts are involved in these appeals. For the purposes of this judgments the facts have been taken from FAO No. 856 1989.

2. This is an appeal against the judgment and order dated 10.4.1989 passed by the Motor Accident Claims Tribunal, Hissar. The Motor Accident Claims Tribunal (for short the Tribunal) in this case allowed a claim of Rs. 72,000/-. However, the Tribunal held that compensation assessed will be payable by Baldev Singh and Surender Singh, respondents, jointly and severally. As regards the Insurance Company, that is, New India Insurance Company Ltd, Sirsa, the Tribunal held that the Insurance Company is not liable to pay compensation.

3. Mr. Munishwar Puri, Advocate, counsel for the appellant, has strongly contended that the finding for the Tribunal recorded in para 25 of the judgment in so far as it holds that the Insurance Company is not liable to pay is erroneous in law. He has also drawn my attention to the finding of the Tribunal that the deceased labourer was to unload the goods at the destination. It means that the deceased was working for the owner of the truck. Mr. Munishwar Puri relied upon the decisions of this Court reported as M/s. United India Insurance Co. v. Rattan

Singh (1987)92 P. L. R. 518. Sushil Kumar v. National Insurance Co., (1986-1) 89 P. L. R. 458. Abdul Sattar Qureshi v. Mehboob (1986) 89 P. L. R. 567. The Oriental Fire and General Insurance Ltd. v. Matta Chandra Rao (1987) 2 A.C.C. 28, Vivek Kumar v. Kasturabai (1987) 2 A.C.C. 362, and Hullanbai and Others Vs. Jagdish Prasad and Others, , for the proposition that if a labourer is engaged for leading and unloading of the truck, the Insurance Company is liable He has also invited my attention to the policy, Annexure P/2, according to which six labourers are allowed. He further submits that the labourer had died.

4. After carefully considering the arguments of both the parties, I am of the opinion that the Insurance Company is liable to pay compensation in the present case. Admittedly, the truck in question was insured with the New India Insurance Company Ltd. respondent No. 3. The driver was driving the truck during the course of his employment. It has been held by the Tribunal that the accident was caused due to the rash and negligent driving. Admittedly, the truck driver carried the deceased in his truck. He was driving the truck during the course of his employment. It is difficult to sustain the finding of the Tribunal that the Insurance Company is not liable. The Tribunal has taken a wrong view of the matter that the driver was acting contrary to Section 95 of the Motor Vehicles Act. On the facts of the case, this finding cannot be sustained. In my opinion once it is found that the truck is insured and the deceased was going in the truck and the accident was caused due to rash and negligent driving the insurance Company cannot escape its liability. Admittedly, the truck in the present case was insured and the deceased was in the truck and therefore, the insurance-company is liable.

5. It is also important to note that the insurance company has not challenged the finding of the Tribunal that the labourer was to unload the goods at the destination. In view of the finding, there is no escape from the conclusion that the insurance company is liable to pay the compensation in the present case.

6. In view of the above discussion, I partly accept this appeal with casts throughout and modify the judgment and order passed by the Tribunal dated 10.4.1989 and hold that the insurance company will be liable to pay the compensation in this case. The insurance company will also be liable to pay interest at the rate of 12 per cent from the date of the application till its realisation. The insurance company is directed to deposit the compensation amount together with interest within one month of the receipt of his order.

