

(1988) 09 P&H CK 0115
In the Punjab And Haryana At Chandigarh

Chandrawali and Others

APPELLANT

Vs

Balwinder Singh and Others

RESPONDENT

Date of Decision : 01-09-1988

Acts Referred:

Evidence Act, 1872 — Section 64, 65, 66

Citation : (1989) 1 ACC 519

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

S.S. Sodhi, J.—The matter here concerns the liability of the Insurance Company, namely; the Oriental Fire and General Insurance Company Limited for payment of compensation to the widow and children of Attar Singh deceased who was killed while driving his motor-cycle when it was involved in an accident with the Matador H.R.M. 1808. This happened on July 13, 1982, on the Narnaul-Mohindergarh Road. The Tribunal, after holding that the accident had been caused due to the rash and negligent driving of the Matador awarded a sum of Rs. 91,200/- as compensation to the claimants.

2. The claimants, in their appeal, seek enhanced compensation while in the other appeal by the Insurance Company, the challenge is to its liability for payment of the compensation awarded to the claimants.

3. The controversy that now emerges is with regard to the admissibility of Exhibit R/1, a copy of the Policy of Insurance. The record shows that this document was tendered in evidence by the counsel for the Insurance Company at the conclusion of evidence and it was then taken on record and marked as Exhibit R/1 and while the matter was before the Tribunal, not objection was, at any stage, taken to its admissibility. It was only now, during arguments, that its admissibility was sought to be questioned on the ground that this copy of the Policy of Insurance had been brought on record without complying with the provisions of the Evidence Act relating to the admission of secondary evidence. This contention being founded upon the judgment of this Court in M/s Malwa Bus Service

Limited, Moga, District Fariikot, through its Managing Director and Ors. v. Amrit Kaur and Anr. 1987 (1) PLR 618, where, in dealing with the admissibility of a copy of Policy of Insurance, exhibited without objection. D.V. Sehgal, J. observed :

I, however, find that Exhibit R-1 is only a copy of the insurance policy. It was tendered in evidence by the statement of the counsel at the stage of closing the case. Section 64 of the Indian Evidence Act, 1872, provides that documents must be proved by primary evidence except in the cases mentioned in Section 65. Section 65 *ibid* lays down that secondary evidence relating to a document may be given of the existence, condition or contents in the case where the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved or, of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it and when, after the notice mentioned in Section 66, thereof such person does not produce it. Secondly, evidence of a document can also be produced where the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any reason not arising from his own default or negligent, produce it in reasonable time or, where any of the other conditions specified in Section 65 exists. In the present case none of these conditions has been proved. Therefore, copy of the insurance policy Exhibit R-1, was not admissible in evidence as conditions of Section 65 of the Indian Evidence Act, 1872, were not met with. The copy of the insurance policy Exhibit R-1, therefore, cannot be read in evidence.

4. With respect, this view, in so far as it tends to imply that a copy of a document, not otherwise inadmissible even though exhibited without objection, must be treated to be inadmissible unless the provisions of Sections 65 and 66 of the Evidence Act have been complied with, requires reconsideration. As held by the Division Bench of the High Court of Lahore in *Docar Mal and Ors. v. Sunam Ram and Ors.* AIR (31) 1944 Lahore 58, the mode of proof of a document is a question of procedure and is capable of being waived and when objection as to the manner of proof of a document is not taken at the time when the document is sought to be proved in the lower court, it is too late to raise it for the first time in Second Appeal. The Privy Council in *Gopal Das and Anr. v. Sri Thakurji and Ors.* AIR (30) 1943 Privy Council 83, also held that objection as to the mode of proof of a document must be taken before it is marked as an exhibit and admitted on record and not for the first time in appeal. Similar views have also been expressed in *U Po Kin and Anr. v. U So Gale* AIR 1936 Rangoon 277 and *Umar-ud-Din v. Ghulam Mohammad and Anr.* AIR 1935 Lahore 628.

5. Such thus being the situation here, this matter clearly deserves to be placed before a larger Bench. The papers of this case are accordingly directed to be laid before the Hon^{ble} Chief Justice for appropriate orders.