

(2014) 04 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1385 of 2000

Dilbagh Singh

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 167

Citation : (2014) 175 PLR 486

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Naren Partap Singh, Advocate for the Appellant; Vandana Malhotra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The owner is aggrieved by the fact that in the manner of determination of compensation for injuries received by a workman the insurer was made liable to pay only the liability that would arise if a claim were to be made under the Workmen Compensation Act. For the rest of the amount it was made payable by the owner. The counsel appearing on behalf of the owner contends that the insurer had taken an extra premium of Rs. 45/- to cover the risk of the driver and the person employed in connection with the operations of maintenance of the insured's vehicle. This is the basic premium which the owner is bound to take for a commercial vehicle. Section 147 of the Motor Vehicles Act details the classes of persons who would be required to be compulsorily covered and what policy shall be provided for Section 147(1) proviso states that a policy shall not be required to cover the liability in respect of death or injury to any employee other than the liability arising under the Workmen Compensation Act in respect of death or injury. The only liability that is required to be therefore covered is the liability arising under the Workmen Compensation Act and the restriction of the liability shall be seen through the provisions of the Workmen Compensation Act itself. If only a specific document cover allows for unlimited

liability as far as the workman is concerned it shall be possible to make a claim against the insurer only to the extent to which the Act provides.

2. It ought not to be understood that in every case where a workman comes by injury or death the entitlement shall be only to the extent which the Workmen Compensation Act provides. Where ever the workman is a third party to an accident caused at the instance of another then there are two ways possible for a person to secure the redressal: i) To file a case against his own employer and the insurer under the Workmen Compensation Act in which the liability shall be as under the Workmen Compensation Act. The forum of such institution would be either under the Workmen Compensation Act or under the Motor Vehicles Act;

ii) The alternative shall be for the representative of the deceased or the injured workman to file a petition under the Motor Vehicles Act. against yet another motor vehicle which had caused the accident. In such an event the scales of compensation shall be as under the Motor Vehicles Act itself. The Motor Vehicles Act itself provides for the manner of how a person could levy a claim u/s 167 either under the Workmen Compensation Act or under the Motor Vehicles Act and not under both. This provision must therefore be understood as making possible different types of claim in different forums not simultaneously but one in alternation to the other. We have not come by a homogeneous approach to compensation for injuries or death under various enactments like. The Railways Act, Carriage by Air Act and Merchant Shipping Act. All of them contain provisions for compensation. A case for death or injury yields to a compensation depending on the vehicle in which he was traveling and the forum before which the remedy is sought. Each Act provides for different tools of compensation assessment. Even a MACT Tribunal determining compensation will not be without power to assess the compensation in the manner provided under the other enactments. That has been the exercise done in this case. The insurer has been made liable to pay the compensation of what is assessable under the Workmen Compensation Act and make the insurer pay. The additional amount under the normal circumstances could not have been directed against any other person. However, in this case considering the fact that the workman has come by injuries by the conduct of a co-employee of the driver instead of allowing for all the expenses from the co-employee, if it has allowed for the amount to be recovered from the employer. Substantial justice has been done and calls for no interference.

The appeal is dismissed.