

(1985) 05 P&H CK 0026
In the Punjab And Haryana At Chandigarh

Har Devi and Others

APPELLANT

Vs

Inder Parkash and Others

RESPONDENT

Date of Decision : 09-05-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1985) 2 ACC 521

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

Bench : Single Bench

Judgement

S.S. Sodhi, J.—Challenged in appeal here is the wholly untenable order of the Tribunal declining compensation to the claimants on the ground that the co-owner of the offending tractor had not been impleaded as a party. What is even more glaring is the absolving of the tractor-driver from liability despite the finding that he was wholly to blame for the accident.

2. Rajinder Parshad, young engineer was killed while driving his scooter when the tractor HRD-6356 driven by Inder Parkash respondent came on to the wrong side of the road and hit into it. This happened on February 1, 1978 at about 5-15 P.M. near the sugar-mill at Panipat It was the finding of the Tribunal, which has not been questioned in appeal, that the accident had been caused entirely due to rash and negligent driving of the tractor.

3. The claimants here are the mother, widow and children of Rajinder Parshad. As has been mentioned earlier, no compensation was awarded to them for the reason that the co-owner of the tractor had not been impleaded as a party.

4. A reference to the pleadings would show that in the claims application Khushi Ram respondent was named as the owner of the tractor. This averment was not controverted by the respondent-Insurance Company. Inder Parkash and Khushi Ram respondents, however, took the plea that Anil Chaudhry was also the owner of the vehicle. This led to a specific issue being framed on whether Anil Chaudhry was a necessary party to the proceedings. It is pertinent to note

however, that no evidence was led thereafter to show that Anil Chaudhry was in fact a co-owner of the tractor involved in the accident. Neither Anil Chaudhry nor any of the legal representatives of Khushi Ram came into the witness box to depose to this aspect of the case. The only evidence that counsel for the respondents sought to rely upon was the policy of insurance where the insurers were recorded as being Khushi Ram and Anil Chaudhry. The testimony of the tractor-driver RW 1 Inder Parkash, however, makes interesting reading in this behalf, in that he deposed that he had been working for Khushi Ram for two years and was getting a salary of Rs. 200/- from him. There was no mention by him of Anil Chaudhry nor was it even suggested to him that Anil Chaudhry too was a co-owner of the tractor. This being the state of evidence on record, there was clearly no warrant for holding that Anil Chaudhry was a co-owner of the tractor. In other words, the ground on which the Tribunal had denied compensation to the claimants does not exist.

5. The question next to consider is the quantum of compensation payable to claimants. It has come in evidence that the Rajinder Parshad, who was 29 years of age at the time of his death was employed as a junior engineer with the National Building Construction Corporation at a salary of over Rs. 800/- per month. PW 2 Sudhakar Gupta Accountant of the said Corporation deposed that Rajinder Parshad had joined the Corporation in December 1977 as junior Engineer and his services had been lent to National Fertilizers Limited, Panipat. This was corroborated by the statement of PW 4 Ramesh Chauder Gandhi, Senior Assistant of National Fertilizers Limited, Panipat. According to PW 7 Kamla, the 25-years old widow of the deceased, they had two minor children, a son aged 8 and a 2-years old daughter. Besides this, the deceased also had dependent upon him his widowed mother. She also stated that the salary of the deceased was their only source of livelihood and this salary was over Rs. 800/- per month.

6. It will be seen that Rajinder Parshad deceased was a qualified Engineer, well-employed and thus had a bright future in his career to look forward to. The claimants, particularly his widow and young children would have been dependent upon him for many more years. Considering the situation of the claimants and the deceased in the context of the principles Laid down by the Full Bench in Lachhman Singh v. Gurmit Kaur 1979 PLR 1 "16 would clearly be the appropriate multiplier to be applied and the dependency deserves to be assessed at Rs. 8,000/- per annum. This would work out to Rs. 1,28,000/- (Rs. One lac and twenty-eight thousand only, which the claimants must indeed be held entitled to.

7. As regards the liability for payment of the amount awarded, a strong plea was raised by Mr. G.S. Bhatia supported by Mr. Muneshwar Puri counsel for the respondent-Insurance Company to the effect that the liability of the Insurance Company must be held to be limited to Rs. 50,000/- only. The argument put forth being that as no plea had been raised by the claimants, that the liability of the Insurance Company Was unlimited it must be deemed to be limited to the minimum as prescribed u/s 95 of the Motor Vehicles Act. Reliance in this behalf

was placed upon the judgment of the Division Bench of the High Court of Allahabad in Desraj and Others Vs. Ram Narain and Others, where it was held that if a person claims that under the contract of insurance, the insurance company had undertaken to indemnify the insured for a sum larger than that prescribed u/s 95 of the Motor Vehicles Act, he must make available the policy of Insurance for perusal by the Tribunal. In the absence of this policy, the Tribunal cannot fix any liability higher than that mentioned in Section 95 of the Motor Vehicles Act. Reference was also made to Automobiles Transport (Rajasthan) Pvt. Ltd. and Another Vs. Dewalal and Others, where it was observed that in the absence of a contract to the contrary the liability of the Insurance Company cannot exceed that provided in the statute. It is to be noticed here, however, that a specific plea had been put-forth on behalf of the Insurance Company that its liability was limited to what had been prescribed under the Motor Vehicles Act. Counsel for the Insurance Company had also cited the judgment of the Supreme Court in Pushpabai Purshottam Udeshi and Ors. v. Ranjit Ginning and Pressing Co. and Anr. 1977 ACJ 343, but this calls for no comment here as the matter raised in that case bears no connection with the point now canvassed.

8. An apt and conclusive answer to the contention put-forth by the counsel for the Insurance Company is provided by the recent judgment of the Division Bench of this Court in Ajit Singh v. Sham Lal 1984 ACJ 255, where it was held that the provisions of Section 95 of the Motor Vehicles Act merely indicate the minimum requirements of the limits of liability of the Insurance Company, but they do not prohibit a greater risk being covered by the insurer and therefore where the Insurance Company, for whatever reasons fails to bring on record the policy of insurance, it cannot be heard to say that it had agreed to indemnify the insurer only to the extent indicated in the statutory provisions. This clearly provides a binding precedent here.

9. Further, it is also well-settled that once it is found that the offending vehicle was covered by a valid policy of insurance, the insurer would be liable for the entire compensation awarded unless a specific plea is raised to the effect that its liability is limited to a particular sum and the policy of insurance is also produced on record to establish such limitation. In the present case, no such plea was raised by the Insurance Company. It would be significant to note that in the policy of insurance placed on record, no figure was mentioned against the column relating to compensation payable in respect of death or bodily injury. This being the situation, the Insurance Company cannot be heard to say that its liability in the present case cannot extend to payment of the entire amount awarded.

10. The claimants are accordingly hereby awarded a sum of Rs. 1,28,000/- (Rs. One lac and twenty-eight thousand only as compensation which they shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded. Out of the amount awarded, a sum of Rs. 10,000/- shall be paid to the mother of Rajinder

Parshad deceased and Rs. 25,000/-each to his minor children and the balance to his widow. The amount payable in the minor claimants shall be paid to them in such manner as the Tribunal may deem to be in their best interest.

11. The respondents shall be jointly and severally liable for the compensation awarded.

12. This appeal is accordingly hereby accepted with costs. Counsel fee Rs. 500/-.