

(1992) 07 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1186 of 1990

Har Kaur

APPELLANT

Vs

United India Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 27-07-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(1)

Citation : (1993) 1 ACC 38 : (1993) ACJ 1193

Hon'ble Judges : S.S. Sodhi, J;J.B. Garg, J

Bench : Division Bench

Advocate : M.L. Sarin and Alka Sarin, for the Appellant; Ravinder Arora and N.K. Khosla, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The controversy here is with regard to the liability of the respondent insurance company for payment of compensation awarded to the claimants.

2. On 10.9.1983 a truck HRH 7256 travelling from Sirsa to Delhi was involved in an accident with another truck HRN 6137 coming from the opposite direction. Kala Singh and his son Teju, who were travelling in the truck HRH 7256, were killed as also their six buffaloes and calves which were being transported in this truck. On this truck there was another buffalo and calf too. These belonged to the owner of the truck, Krishna Wanti. They too died a couple of days later on account of the injuries sustained in this accident.

3. It was the finding of the learned single Judge [reported in The United India Insurance Co. Ltd. Vs. Smt. Bimlesh and Others,] that the accident was caused entirely due to the negligence of Subhash, the driver of the truck HRH 7256. A sum of Rs. 1,50,000/- was awarded as compensation to Bimlesh, the widow of Teju and their two minor children while Har Kaur, the widow of Kala Singh, was awarded Rs. 1,20,000/- and another Rs. 24,000/- on account of the loss of the

six buffaloes.

4. As regards the liability for the compensation awarded, the learned single Judge restricted it to the owner and driver of the truck HRH 7256. The insurance company, the United India Insurance Co. Ltd., with which the offending truck had been insured was, however, absolved from liability. This is now what constitutes the challenge in this appeal.

5. According to the learned single Judge, both the deceased were travelling in the truck as passengers with their buffaloes and not in the course of any employment with the owner of the truck and liability with regard to them was consequently not covered under Clause (b) of Sub-section (1) of Section 95 of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). The insurance company was thus not liable. Reliance in this behalf was being placed upon the judgment of the Full Bench of this court in *Oriental Fire and General Ins. Co. Ltd. v. Gurdev Kaur* 1967 ACJ 158, wherein it was held that the owner of goods travelling with his goods in the truck was not covered u/s 95(1)(b) of the Act and the insurance company was thus not liable to satisfy the award in respect of him. This view was later followed in the *New India Assurance Co. Ltd. v. Shanti Devi* 1986 (2) PLR 106, wherein it was held that the insurance company could not be held liable in respect of the hirers of the truck travelling in it in order to guard their goods carried in the truck.

6. Mr. M.L. Sarin, Senior Advocate, appealing for the appellant, however, sought to put the matter on a different plan, namely, that the deceased were travelling in the truck in the course of their employment with the owner of the truck. This being founded upon the plea put forth in the claim application to the effect that one buffalo and calf being carried in the truck belonged to Krishna Wanti, the owner of the truck and the deceased had been employed by her on a remuneration of Rs. 50/- to deliver them to her relatives in Delhi. This was, however, controverted by the owner and driver of the truck as also the respondent insurance company.

7. Before proceeding further, it would be pertinent to note that the plea that the deceased had been employed by the truck owner to take her buffalo and calf to her relative in Delhi was not put in issue nor it was raised before the Claims Tribunal. The Tribunal, in fact, held that this was a case of contributory negligence and thus both the owners and the insurance companies were liable. It was for the first time before the learned single Judge that this question was raised, consequent upon the finding that the accident had been caused entirely due to the negligence of the truck HRH 7256.

8. A reference to the material on record would show that the direct evidence with regard to the deceased being entrusted with the seventh buffalo being carried in the truck by the owner of the truck to be delivered to her relative in Delhi on payment of remuneration to them comes in the statement of PW 6, Jaipal Singh. According to him, he was a commission agent for the sale of animals and it was

through him that the deceased had purchased their six buffaloes. It was further his testimony that these buffaloes along with one other and their calves were loaded, in his presence, in a truck, the driver of which was Subhash. One of the buffaloes belonged to the owner of the truck who had paid Rs. 50/- to the deceased to deliver it to the house of her relative. The statement of this witness did not, however, find favour with the learned single Judge on the ground that the driver of the truck had not disclosed either that Krishna Wanti, the owner of the truck, was travelling in the truck or was present when the buffaloes of the deceased were loaded on the truck. Further, that the buffaloes had been loaded on the truck when it was signalled to stop and there was, therefore, no question of any contract with regard to the seventh buffalo, between the deceased and the owner of the truck. It was further held that, at any rate, the driver and the cleaner of the truck could have performed this duty. With respect, we are unable to endorse these conclusions or reasons.

9. It will be seen that the statement of PW 6, Jaipal Singh, to the effect that the seventh buffalo was taken over by the deceased, on remuneration being paid to them by the owner of the truck to deliver it to her relative, was not, in any manner, challenged in cross-examination. It is also significant to note that no question was put to him with regard to the place where these buffaloes were loaded on to the truck. As regards the suggestion that the driver and the cleaner of the truck could have taken the buffalo of the owner to her relative in Delhi, it must be appreciated that looking after and handling a buffalo is not a task that every person can handle. It is only one who has some experience of it who can do so. There is thus nothing inherently improbable in the deceased being entrusted with this task rather than the driver and the cleaner of the truck.

10. Taking an overall view of the evidence on record and the totality of the circumstances of the case, we cannot but accept the plea of the claimants that the deceased had been employed by the owner of the truck to look after the buffalo on the journey and to deliver it to her relative in Delhi, for which they had also been paid 50/- as remuneration. This being so, it follows that they were on the truck in the course of their employment. The liability in respect of them thus clearly falls within the ambit of Clause (b) of Sub-section (1) of Section 95 of the Act. The respondent insurance company, i.e., the United India Insurance Co. Ltd., is consequently also Appeal allowed liable for payment of the compensation awarded to the claimants.

11. The order of the learned single Judge is, therefore, modified accordingly and this appeal is thus accepted with costs. Counsel's fee Rs. 500/-.