
(1979) 08 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from the Order No. 229 of 1971

Indian Mercantile Insurance Co. Ltd.

APPELLANT

Vs

Smt. Chamla Devi and Others

RESPONDENT

Date of Decision : 02-08-1979

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)

Citation : (1980) 82 PLR 490

Hon'ble Judges : G.C. Mittal, J

Bench : Single Bench

Advocate : Lalit Mohan Singh and R.M. Suri, for the Appellant; H.S. Sawhney, for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mttal, J.—This is an appeal by the insurance company against the award of the Motor Accident Claims Tribunal, Gurgaon, dated 22nd of April, 1971, whereby a sum of Rs. 8,000 has been awarded to each of the three claimants against Ishwar Singh, driver, Randhir Singh, owner of the truck and the appellant-insurance company. Out of the amount awarded Rs. 20,000 was to be paid to the claimants by the insurance company and the remaining by the owner and the driver of the truck jointly and severally.

2. Ram Karan was conductor on truck No. HRG-1170, which belonged to Randhir Singh, respondent, and used to be driven by Ishwar Singh, respondent. The truck was insured with M/s. Indian Mercantile Insurance Co. Ltd., New Delhi, and under the policy there was a special clause that the insurance company would be liable to compensate not only under the Workmen's Compensation Act, 1923, but also under the Fatal Accidents Act or at common law in respect of any personal injury to any paid driver (or cleaner or conductor or a person employed in loading and/or unloading). On 12th of March, 1969, while Ram Karan, conductor, was checking the wheels of the truck, the driver started it with the result that Ram Karan was crushed under the wheel of the truck as a result of

which he died at the spot. The widow, a minor son and a minor daughter of the deceased-conductor filed a claim petition before the Motor Accident Claims Tribunal, Gurgaon, for awarding Rs. 50,000 as compensation.

3. The application was contested by all the respondents except Ishwar Singh, driver, who did not appear and was proceeded ex parte. The insurance company took the plea that by virtue of Section 95 of the Motor Vehicles Act, 1939, the Motor Accident Claims Tribunal has no jurisdiction and it was further pleaded that the liability, if any, with regard to a conductor, which was required to be covered under the provisions of the Motor Vehicles Act, was limited up to the liability as fixed under the Workmen's Compensation Act. It was also stated that the maximum liability of the insurance company was limited to Rs. 20,000 only, besides taking other pleas that there was no rash and negligent driving by the driver of the truck and for that reason no compensation was liable to be paid. On the contest of the parties, the following issues were framed :

1. Whether the Tribunal has no jurisdiction to try this petition ?
2. Whether the award cannot be passed against the insurance company ?
3. Whether the deceased Ram Karan was a conductor on truck No. 1170-HRG?
4. Whether the deceased was killed as alleged by the applicants and to what compensation are the applicants entitled ?
5. Whether the applicants are the heirs of the deceased ?
6. Relief.

4. The Tribunal held under issue No. 1, on the basis of certain decisions which have been noticed, that it had the jurisdiction and this point has not been raised before me in appeal. As regards issues Nos. 2, 3 and 4 which were dealt with together, it was held that the case was not covered by Section 95 of the Motor Vehicles Act with the result that the Workmen's Compensation Act was not applicable and, therefore, the liability of the insurance company was not limited to the amount which could be awarded under the Workmen's Compensation Act. The driver of the truck was held guilty of rash and negligent driving and these issues were decided in favour of the claimants. Under issue No. 5, it was held that all the claimants are heirs of the deceased.

5. Before me, Mr. L. M. Suri, wanted to raise his first submission which was also raised before the Tribunal that since the deceased was a conductor on the truck, the case fell u/s 95(2)(b) of the Motor Vehicles Act and the compensation which had to be awarded to the claimants had to be calculated in the manner given in the Workmen's Compensation Act. Before this point could proceed further for discussion, Mr. H. S. Sawhney, appearing for the claimants, pointed out from the insurance policy, which is on the record, that there was a special clause in the insurance policy for which the insurance company took higher premium and according to that clause this point need not be gone into although he is on firm

footing on this point also, in view of the Supreme Court decision in Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mohammad Issak [1969] ACJ 422.

6. I think Mr. H. S. Sawhney, counsel for the claimants, is right in saying that the aforesaid point raised by Mr. Suri need not be gone into in view of the special provision in the policy on the basis of which the claimants would be entitled to claim compensation at common law. In support of this point, Mr. Sawhney, apart from relying on the special clause, has cited before me a judgment of the Madras High Court in General Assurance Society Ltd. Vs. Jayalakshmi Ammal and Others, , and two Division Bench judgments of the Gujarat High Court in Punjabhai Prabhudas & Co. v. Sakinaben Mohamabhai [1977] ACJ 44, AIR 1977 Guj 179 and Gujarat Mineral Development Corporation Ltd. Vs. Varjubhai Lallubhai Bhil and Others etc., . For facility of reference, the quotation from Punjabhai Prabhudas v. Sakinaben may be reproduced (at p. 33 of Gujarat Mineral Development Corporation Ltd. Vs. Varjubhai Lallubhai Bhil and Others etc.,):

""...the endorsement quoted above shows that the legal liability of the insurance company was not limited only to one arising under the Workmen's Compensation Act, 1923, but also extended to the liability arising under the Fatal Accidents Act, 1855, or at common law. The expression at common law used in Endorsement No. 16 knocks the bottom of the insurance company's defence down.... " "

7. Mr. L. M. Suri had no reply to the aforesaid argument except that he wanted to rely on K. N. P. Patil v. K. L. Kasar [1966] ACJ 284, a decision of the Bombay High Court, where a car passenger was not allowed any compensation against the insurance company. That case has nothing to do with the present case as there is a specific provision in the policy for grant of compensation to the conductor and other employees of the insured truck under the common law. As such, this case does not militate against the view taken by the Madras and Gujarat High Courts with which I fully agree. Accordingly, I hold that in view of the special provisions the claimants were entitled to the compensation under common law and they could be awarded compensation beyond the amount fixed in the Schedule to the Workmen's Compensation Act.

8. No meaningful argument was raised before me to show that the driver of the truck was not guilty of rash and negligent driving when he started the truck without ensuring whether the conductor has come out from under the truck after checking the wheels. It is a clear case of rash and negligent driving and the insurance company is liable to pay compensation to the heirs of the deceased. However, Mr. Suri was fair enough to concede that in view of Section 96(2) of the Motor Vehicles Act and the decisions in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, and General Assurance Society Ltd. v. N. A. Mohammed Hussain [1966] 36 Comp Cas 340 ; [1966] ACJ 203, the insurance company cannot raise any argument regarding the quantum of compensation.

9. For the reasons recorded above, I find no merit in the appeal filed by the

insurance company and dismiss the same. However, there will be no order as to costs.