(1988) 10 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 528 of 1984, Cross-objection No. 84-C II of 1984 and C.M. No. 5197-C II of 1987

Jullundur Transport Cooperative Society Ltd.	APPELLANT
Vs	
Raj Wali and Others	RESPONDENT

Date of Decision : 04-10-1988

Acts Referred:
Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1988) 10 P&H CK 0005

Hon'ble Judges : K.S. Bhalla, J;G.C. Mital, J

Bench : Division Bench

Advocate : S.P. Jain, for the Appellant; P.S. Patwalia, B.S. Wasu and J.S. Wasu Advs., for the Respondent

Final Decision : Dismissed

Judgement

G.C. Mital, J.—On 1st May, 1975 Kanhiya Lal Wali, aged 39 years, was a passenger in bus No. PUJ 3525 belonging to Jullundur Transport Co-operative Society Ltd., from Pathankot to Jalandhar. The bus was being driven by Jagdeep Singh. At about 3 p.m. near Mirthal the bus turned turtle as a result of which Kanhiya Lal Wali suffered multiple injuries and due to spinal injuries (lumber), resulting in the internal haemorrhage, he died in the Military Hospital at Pathankot. His wife, minor son, minor daughter who was born posthumously, mother and father filed claim petition before the Motor Accidents Claims Tribunal, Gurdaspur (for short ''the Tribunal''), against the owner, driver and the insurance company, on the ground that the bus was driven rashly and negligently, as a result of which and due to the injuries suffered in the accident their bread-winner had died.

2. The petition was contested and all the allegations were denied. The insurance company took an additional plea that its liability was limited to the extent of Rs. 5,000/- .

3. On consideration of the evidence led on the issues framed in the case, the Tribunal vide its award dated 11th April, 1984 came to the conclusion that due to the negligent driving of the bus the accident occurred as a result of which the deceased sustained injuries and died. The claimants were entitled to compensation. Considering the monthly dependency to be Rs. 200/- the multiplier of 16 years was applied and total compensation of Rs. 38,400/- was allowed with 10 per cent per annum interest thereon. The liability of the insurance company was limited to Rs. 5,000/-

4. The owner of the bus has come to this Court in appeal and the claimants have filed cross-objections. The Motion Bench admitted the appeal to DB but there is no indication in the order as to on which point it was so done.

5. The first point argued by the counsel for the Appellant was that the liability of the insurance company was unlimited and in any case was to the extent of Rs. 50,000/- and the onus was on the insurance company to prove that its liability was limited to Rs. 5,000/- and since no evidence was led before the Tribunal, it should be ordered that the entire amount shall be payable by the insurance company.

6. The insurance company had taken up the plea in reply before the Tribunal that its liability was limited to Rs. 5,000/- and that is why while framing issue No. 3, it was stated therein as to from whom the Applicants are entitled to compensation. Before this Court, an application for additional evidence was filed by the insurance company and the copy of the policy has been produced on the record. A reading of the copy of the insurance policy shows that there was no payment of extra premium for fixing higher liability of the insurance company. The original policy is always with the insured (owner of the vehicle) and in spite of the notice of the application for leading additional evidence, the owner of the vehicle has not produced the original.

7. u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939 (for short ''the Act''), the liability of the insurance company per passenger at the relevant time was limited to Rs. 5,000/- . However, the parties can contract out of this on paying higher premium and the liability of the insurance company can be enlarged. For that ordinarily, the burden would be on the owner of the vehicle who wants to plead and prove that there was a special contract of payment of higher premium for enlarging the liability. In the reply filed by the owner of the vehicle before the Tribunal no such plea was raised nor evidence was led. Even before us, the original has not been produced nor any other evidence led to prove that higher premium was paid to enlarge the liability of the insurance company. Accordingly, on the facts of this case it cannot be said that the liability of the insurance company was beyond the statutory liability of Rs. 5,000/- .

8. It was then argued that additional evidence should not be allowed to be produced at this stage and if the additional evidence produced by the insurance company is discarded the finding will have to be returned in favour of the owner

of the vehicle. We are afraid there is no merit in the argument on the peculiar facts of this case. The argument cannot be generalised and has to be dealt with on the facts of each case. Counsel for the owner of the vehicle has cited National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , in support of the proposition raised by him but on going through para 9 of the judgment we find that the insurance policy was neither produced before the Tribunal nor before the High Court whereas in the case in hand the insurance company has produced the copy of the policy before us. Moreover, from the insurance policy produced by the insurance company before the Supreme Court in the reported judgment, a finding was recorded that the liability of the insurance company was limited to the statutory liability only and the appeal was allowed. Therefore, primarily it is the duty of the owner of the vehicle to produce the insurance policy and if it fails to do so as per guidelines given in para 9 of the reported judgment, the insurance company should do so to cut short the litigation and help the court in doing justice between the parties. This judgment rather helps the insurance company.

9. In the case before us, in spite of the fact that the insurance company has produced the copy of the policy from its record which does not show if any extra premium was paid to enlarge the liability and the owner of the vehicle has failed to produce the original. Under the circumstances, we allow Civil Misc. No. 5197-CII of 1987 in the interest of justice and for proper decision of the case and permit the copy of the insurance policy to be read in evidence.

10. It was then sought to be argued that it was not proved if the bus belonging to the Appellant-company was involved in the accident. We have gone through the evidence of Gurdial Singh, PW 1 and on a reading of his statement we endorse the finding recorded by the court below that bus belonging to the Appellant-company was involved in the accident and due to rash driving it turned turtle causing injuries to the passengers including the bread-winner of the claimants before us, who ultimately died in the Military Hospital. Accordingly, we reject the argument and hold that the bus of the Appellant was involved in the accident.

11. It was then urged that there is no medical evidence available on the record to show that if the deceased died as a result of the injuries received in the accident. Earlier the case was heard by another Bench and they had allowed opportunity to the claimants to produce the evidence from the Military Hospital and when it transpired that evidence was not available, opportunity was granted to produce certified copy of the medical certificate regarding cause of death and the report made to the authority maintaining the death register. They were exhibited as C-1 and C-2 by this Court.

12. Adverting to Exh. C-1, we find that the injury leading to death is noted as spinal injury (lumber) internal haemorrhage. This document has been obtained from Military Hospital, Pathankot. Exh. C-2 is the death certificate and it shows that report was made on 7th May, 1975 and the cause of death is given as

accident and place of death is Military Hospital, Pathankot. The aforesaid documents read with the oral evidence on record amply prove that the bread-winner of the claimants died as a result of the injury on the backbone and haemorrhage in the Military Hospital where he was removed after accident. It is also in evidence that the injured passengers of the vehicle belonging to the Appellant-company were removed to the Military Hospital. Taking all this evidence into consideration we record a finding that Kanhiya Lal Wali died as a result of serious injuries to the backbone and haemorrhage which he received in the accident while being a passenger of the bus belonging to the Appellant.

13. Since claimants have filed cross-objections for enhancement of compensation, in this regard we deal with the case of both the parties. The deceased had borrowed a loan of Rs. 10,000/- for setting up a small scale industry and the relevant evidence in this behalf has been produced on record from the concerned department and the same has remained uncontroverted. This part of the evidence has been believed by the Tribunal as well. The Tribunal concluded that he was giving Rs. 200/- per month to his family members and this was considered as his dependency and by applying multiplier of 16 years awarded Rs. 38,400/- . We are of the opinion that the deceased must have been giving Rs. 300/- per month to his family members. Even a labourer would be giving Rs. 300/- per month to his family members. On this basis annual dependency would come to Rs. 3,600/- . Applying the multiplier of 16 years the compensation would come to Rs. 57,600/- . We consider this to be reasonable compensation on the facts of the case.

14. For the reasons recorded above, while the appeal of the transport company is dismissed, the cross-objections filed by the claimants are allowed and the compensation is enhanced to Rs. 57,600/- . On the amount of Rs. 57,600/- , the claimants would be entitled to interest at the rate of 12 per cent per annum from the date of filing of the claim application till realization. Out of the awarded amount, the insurance company would be liable to pay Rs. 5,000/- with interest thereon as indicated above and the balance would be payable by the Appellant and its driver jointly and severally. They would also be entitled to costs of these proceedings from the owner of the vehicle which are quantified at Rs. 1,000/- .