
(1994) 05 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 989 of 1984

Kusum Sood

APPELLANT

Vs

United India Insurance Company Ltd.

RESPONDENT

Date of Decision : 26-05-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1995) ACJ 242 : (1994) 108 PLR 62

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : Munishwar Puri, for the Appellant; R.M. Suri, for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—This appeal has been filed by the claimants against the award of Motor Accident Claims Tribunal, Ropar dated 30.8.1984 which on a claim petition filed by the claimants for the death of Shiv Darshan Sood, who died in a road accident on 28.10.1982, awarded Rs. 48,000/- as compensation alongwith interest at the rate of 12% from the date of claim petition and liability to pay compensation was fastened on Prem Chand. Driver of Car No. HPY-288. The Tribunal has exonerated United India Insurance Company Ltd. with whom the car was insured for the reason that the deceased Shiv Darshan Sood was travelling in his car as a gratuitous passenger.

2. In this appeal the case of the claimant-appellants is that the car HPY-288 was insured with the United India Insurance Company as such the liability should have been fastened on the Company. The other plea is that the income of the deceased and dependency of the claimants on the deceased had not been properly determined.

3. Mr. R.M. Suri, learned counsel for the Company has contended that as per the insurance policy Ex.P-2, the vehicle can be used for conveyance of passengers for hire or reward only and the deceased, who was the owner of the car could not

be taken as a passenger for hire or reward and as such the Insurance Company is not liable to pay compensation in this case.

4. It have considered the submissions of learned counsel for the parties and perused the paper book. From the perusal of paper book, it reveals that the death of the deceased is not in dispute. The only question for determination with regard to fixing of liability to pay compensation and the compensation to which the claimants are entitled. Lok Inder Pal, PW-6, who is brother of the deceased has stated that the deceased was 35 years of old at the time of death and used to earn Rs. 2,000/- per month. He has also stated that the deceased used to pay income tax. During the cross examination, he has stated that he had twice seen the returns submitted by the deceased to the Income Tax Department. The claimants have also produced income tax receipt. However, the claimants did not lead any evidence to prove that the receipt related to the deceased.

5. In my considered view, income of the deceased could not be less than Rs. 1500/- per month. Out of this amount, the deceased must be spending Rs. 500/- on himself and remaining amount of Rs. 1,000/- on his family. In this manner, the annual dependency of the claimants upon the deceased would be Rs. 10,000/-. The deceased had left behind two minor children and a widow. Taking in view the age of the deceased, I think that it is a fit case in which multiplier of 16 should be applied.

6. The total amount to which the claimants are held entitled to comes to Rs. 1,92,000/-. However, the Tribunal had given a categorical finding that the accident was the result of composite negligence of the drivers of the truck and the car though the negligence of the truck driver was more as compared to the car driver and therefore the responsibility was fixed in the ratio of 2:1 respectively. In view of this, the claimants would be entitled to Rs. 64,000/- as compensation.

7. The next question that arises for consideration is as to on whom the liability to pay compensation is to be fixed.

8. The position that emerges is that the taxi was driven by an authorised person who was an employee of the deceased who was having a valid licence. The taxi was duly insured with the Insurance Company. The law does not say that the owner of a vehicle is debarred from travelling in his own car. If some unfortunate event happens and the owner of the vehicle dies, his legal heirs cannot be denied the compensation for the simple reason that the deceased was travelling without hire/reward. The plea of the respondent that the deceased was travelling in his own car and as such was a gratuitous passenger does not appeal to logic especially in view of the fact that the deceased had invested money in the purchase of the car which was duly insured and the expenses on the consumption of the petrol were also borne by him. In view of the this, I am of the view that he was indirectly paying for the running of the car. As such, it cannot be said that he was travelling in his car without any hire or reward.

9. Even otherwise, it is not death of the insured which is the criteria for as

certaining the liability of the respondents and the Insurance Company, but it is the act of the driver which is termed as negligent which causes loss, damage or even death. As stated in the earlier part of the judgment, the driver of the car was holding a valid driving licence and was duly authorised to drive it. As such the liability to pay compensation would be that of the Insurance Company.

10. For all legal heirs, the deceased had dual capacity. He was not only the owner of the taxi, but an occupant also and he was travelling and, therefore, strictly speaking. The position might have been different had the deceased been driving" the taxi himself. The factum of driver driving the car, in my considered view, does not make any difference for fastening liability on the Insurance company. This Court in Kailash Kumar and Ors. v. Bholla and Ors. 1989 A.C.J. 845 has held as under :-

"After issuance of the instructions of the Tariff Advisory Committee, the Insurance Company cannot avoid liability. The owner of the vehicle can legitimately say that under the policy, the Insurance Company was bound to pay to the claimants for the death of the passenger. The Insurance Company had not led any evidence on record that its liability is limited. In the absence of any evidence, it has to be held that the liability of the Insurance Company is unlimited.

11. In view of the foregoing discussion and settled proposition of law, the claimants are held entitled to Rs. 64,000/- as compensation from the Insurance Company and not from the driver. The compensation amount shall be shared by the claimants in the following manner :-

1. Smt. Kusum Sood : Rs. 32,000/- 2. Kumari Manu Sood : Rs. 16,000/- 3. Amit Sood : Rs. 16,000/- The claimants shall also be entitled to interest at the rate of 12% p.a. on the amount awarded from the date of filing of the claim petition till its realisation. It is further directed that the shares of the minors shall be deposited in the Fixed Deposit in any Nationalised Bank till they attain majority. The expenses incurred by guardian or next friend are, however, allowed to be withdrawn from the interest accruing on the fixed deposit. It is further directed that half of the amount falling to the share of Smt. Kusum Sood is to be deposited in the Fixed Deposit and she shall be entitled to the interest accruing on the fixed deposit.

12. Consequently, the appeal is allowed in the terms indicated above. No costs.