
(2004) 05 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 294 of 1986

Mrs. Kanta Sibal and Others

APPELLANT

Vs

Sandhu Transport Co. and Others

RESPONDENT

Date of Decision : 17-05-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2004) 3 ACC 956 : (2005) ACJ 540 : (2004) 137 PLR 493

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : L.M. Suri, Neeraj Khanna and Deepak Suri, for the Appellant;
Maharaj Bakhsh Singh, for the Respondent No. 4, for the Respondent

Judgement

Ashutosh Mohunta, J.—Challenge in this appeal is to the judgment dated 7.2.1986 passed by the Motor Accident Claims Tribunal, kurukshetra (for short "the Tribunal") whereby the claimants have been awarded a sum of Rs. 3,00,000/- on account of the death of Baikunth Lal Kundra in a motor accident on the night intervening 26/27.1.1983 and the liability has been fixed on the owner and driver of the offending vehicle.

2. The deceased Baikunth Lal Kundra was travelling in the bus bearing registration No. PNZ-104 from Delhi to Amritsar on the night intervening 26/27 January, 1983. At about 1 A.M. when the bus reached near Pipli, it struck against a truck bearing registration No. DHL-5791 coming from the opposite direction; With the impact of the strike between the two vehicles, Baikunth Lal was seriously injured and he died on the next day. The Tribunal held Vasan Singh respondent No. 3, responsible for causing the accident as he was found to be plying the vehicle in a rash and negligent manner. The deceased was 60 years of age at the time of his death in the road accident. As per the claimants, the deceased was earning Rs. 60,000/- per annum. The Tribunal found that he was spending Rs. 3,000/- per month on the house-hold and in this way the monthly dependency of the claimants was assessed at Rs. 2,500/- or annual dependency

of Rs. 30,000/-. By applying the multiplier of 10 the Tribunal awarded a total sum of Rs. 3,00,000/- to the claimant-appellants besides other statutory benefits under the Motor Vehicles Act, 1988 (for short "the Act"). The owner and the driver of the vehicle, viz. respondent Nos. 1 and 3, were held liable jointly and severally to make payment to the claimants. The Insurance Co., i.e., respondent No. 4, was absolved of its liability as the vehicle was found to have been insured in the name of Harbhajan Singh, respondent No. 2. Now the claimants have filed this appeal to challenge the award of the Tribunal.

3. It has been contended by Mr. L.M. Suri, learned counsel for the appellants, that the deceased was earning Rs. 60,000/- per year or Rs. 5,000/- per month in the year 1983 when the accident had occurred. He could not have been spending more than Rs. 1,000/- on himself. In this way, the learned counsel contended that the deceased was contributing Rs. 4,000/- per month on his dependents. According to him, the Tribunal has erred in assessing the monthly dependency at Rs. 2,500/- only. He further contended that the Insurance Co. could not be absolved of its liability to indemnify the driver and the owner of the offending vehicle on the ground that the insurance policy was in the name of Harbhajan Singh (respondent No. 2) while the ownership of the offending vehicle was in the name of Sandhu Transport Co., Amritsar (respondent No. 1). The counsel argued that Mr. Harbhajan Singh was the owner of the said Transport Co., and if the insurance policy was in his name, that would not make any difference as both respondent Nos. 1 and 2 are one and the same thing as respondent No. 1 was merely a juristic person.

4. The contentions raised by the learned counsel for the appellants have vehemently been controverted by Mr. Maharaj Bakshish Singh, learned counsel appearing on behalf of respondent No. 4, i.e., the Insurance Co.

5. After hearing the learned counsel for the parties and on going through the evidence adduced on record, I find merit in the contentions raised by the counsel appearing on behalf of the appellants. The assertion of the claimants that the deceased was earning Rs. 60,000/- annually or Rs. 5,000/- per month goes un rebutted on behalf of the respondents. If one-third amount is deducted as the personal expenses of the deceased, then it can safely be concluded that the total monthly dependency of the claimants can be worked out approximately at Rs. 3400/- or annual dependency at Rs. 40,800/-. By applying the multiplier of 10 the total amount of compensation which the claimants are entitled to comes to Rs. 4,08,000/-. Thus, I order that the claimant-appellants will be entitled to an amount of Rs. 4,08,000/- as compensation on account of the death of Baikunth Lal Kundra in the road accident. They shall also be entitled to all the statutory benefits available to them under the Act.

6. Now coming to the liability of the Insurance Co. (respondent No. 4), I am of the considered opinion that the Tribunal has erred in absolving it of the liability to pay the amount of compensation to the claimants. It has been pleaded on its behalf by Mr. Maharaj Bakshish Singh that the insurance policy at the relevant

time was in the name of Harbhajan Singh (respondent No. 2) whereas Sandhu Transport Co., Amritsar, was the owner of the offending vehicle. I do not agree with the contention of the learned counsel appearing on behalf of the Insurance Company. It has come on record that respondent No. 2 Harbhajan Singh is, in fact, the owner of Sandhu Transport Co. Thus, in the real sense of the term he was the owner of the offending vehicle. Sandhu Transport Co. was its owner only in fiction. If the insurance policy was in the name of Harbhajan Singh (respondent No. 2) that would not make any difference. Both Harbhajan Singh and Sandhu Transport Co. are one and the same thing. No evidence to the contrary has been adduced by the Insurance Co. Thus, I am of the considered opinion that respondent No. 4, with which the offending vehicle was insured at the relevant time, cannot be absolved of its liability to indemnify the owner and the driver of the offending vehicle. In the case reported as *New India Assurance Co. Ltd. v. Moti Ram and Ors.* 1967 A.C.J. 312. "A" transferred his vehicle to

"B". The insurance policy was in the name of "A". The vehicle met with an accident during the validity period of the insurance policy. A person sustained injuries and died. In a claim for compensation filed by his dependents it was contended on behalf of the insurance company that as the vehicle had been transferred by "A" to "B", therefore, the insurance company was not liable to pay any compensation. An award for payment of compensation was passed against the driver. The policy contained a clause that the company would indemnify any driver who drove the vehicle on the insured's order or with his permission. It was held by a Division Bench of this Court that "in view of the above extended clause in the policy, the company was liable to indemnify the driver even though the vehicle had been transferred prior to the accident. The mere fact that the vehicle had been transferred did not necessarily mean that the vehicle did not actually remain under the control of the insured for the purpose of being plied for hire. There was no allegation that the vehicle was being driven without the permission of the insured. The mere transfer of ownership of the vehicle did not really affect the matter." In the present case also the driver was plying the vehicle with the permission of the insured i.e. Harbhajan Singh, in whose name the insurance policy was issued. Consequently, it is held that the Insurance Co. (respondent No. 4) is liable to make the payment of the entire amount of compensation, as determined above to the claimant-appellants on its behalf as well as on behalf of the owner and the driver of the vehicle. The Insurance Company can recover the amount over and above the amount of insurance policy from the owner of the offending vehicle by making an application to the executing Court.

7. In the light of the above discussion, the judgment and decree dated 7.2.1986 passed by the Tribunal stand modified to the above extent. The appeal is, accordingly, disposed of.