(1989) 07 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 608 of 1984

National Insurance Co. Ltd. and Another — APPELLANT

Vs

Subhash Kumari and Others — RESPONDENT

Date of Decision : 11-07-1989

Acts Referred:

Citation : (1990) 1 ACC 251 : (1990) ACJ 588 : (1989) 96 PLR 512

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Pradeep Bedi and P.S. Rana, for the Appellant; Salil Sagar, D.D. Verma and P.S. Saini, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The appeal here is by the National Insurance Co. Ltd. seeking to challenge its liability for the compensation awarded to the widow and daughter of Sham Lal deceased, who was killed in a road accident, on the plea that Sham Lal was an unauthorised passenger on the tempo involved in the accident.

2. The accident occurred in the area of village Bheel Chhapra on the Bilaspur-Shehzadpur Road at about 5.30 a.m. on December 4, 1981. Sham Lal was travelling in the Tempo HRA 6865 on which gur belonging to him was being carried. On account of the rash and negligent driving of this Tempo, it went off the road and hit into a tree and it was as a result of the injuries sustained by him in this accident that Sham Lal died. The Tribunal, after recording a finding of negligence against the driver of the Tempo, awarded Rs. 40,000/- as compensation to the widow and daughter of Sham Lai. The driver and owner of the Tempo as also the National Insurance Co. Ltd. with which the Tempo had been insured were held to be jointly and severally liable for the compensation awarded.

3. In seeking to absolve itself from liability, the two pleas raised by the insurance company were that the driver had no valid driving licence and further that the

deceased was travelling in the vehicle as an unauthorised passenger. No evidence was led to show that the driver did not possess a valid driving licence and, therefore, this objection was not persisted with.

4. Turning to the other plea, namely, of Sham Lal deceased being an unauthorised passenger on the Tempo, counsel for the appellant failed to explain in what manner Sham Lal could be branded as an unauthorised passenger as there is no evidence on record to suggest that any objection was, at any time, raised by anyone to his travelling in the Tempo or that he was on the Tempo otherwise than in an authorised manner. This plea is also, therefore, of no avail to the insurance company.

5. Faced with this situation, counsel for the insurance company sought to take up an entirely new plea, namely, that according to the terms of the insurance policy, the insurance company was not liable in the case of death or bodily injury to the owner of the goods being carried in the Tempo. It is for the first time in appeal here that such a point has been sought to be raised. It would clearly be contrary to the interests of justice to permit this to be done as it would patently cause prejudice to the claimants. The insurance company cannot, therefore, be heard to take up this ground at this stage.

6. No occasion is thus provided for absolving the insurance company from liability for payment of the compensation awarded to the claimants. This appeal is accordingly hereby dismissed with costs. Counsel''s fee Rs. 500/-.