(2013) 05 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 2301, 2302, 2303 and 2304 of 1997

National Insurance Co. Ltd. APPELLANT

Vs

Asha Rani and Others RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Citation : (2013) 171 PLR 340

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Inderjit Sharma and Mr. Pardeep Bedi, for the Appellant;

Final Decision : Allowed

Judgement

K. Kannan, J.—All the appeals are by the Insurance Company to make a plea that the deceased persons and one injured were all passengers in a goods vehicle and the compensation arising from the death and injuries cannot leave a trail of claim against the insurer. It is also contended that the policy was an Act Policy and the liability to cover the risk was only for third parties and not for any passenger in a goods vehicle. The vehicle itself had been insured only as a goods vehicle. The contention in the claims were that the deceased persons and the injured person were all travelling towards Haridwar for a mela for preparation of food items for the mela. Therefore, the attempt was to say that they were accompanying some food items which were being transported. The insurance company relied on the fact that the police had not recovered any goods from the spot when they seized the vehicle after the accident. The Tribunal found that the compulsory insurance for third party u/s 147 includes a compulsory cover to owner of the goods travelling along with the goods and consequently the deceased persons and the injured person must be taken as authorised persons travelling along with their goods.

2. I cannot subscribe to the reasoning adopted by the Tribunal. Unless the deceased persons or the injured persons are themselves claimed to be workmen

travelling in the vehicle as employees under the owner of the vehicle as their employer, when the liability could arise in the manner that the Workmen Compensation Act provides for any person found in a goods vehicle, the petitioners cannot justify the presence of deceased persons and the injured without proving that they had been accompanying his own goods which were transported through the goods carrier. There was no such pleading or evidence and attempt was only to state that they were going to the mela for preparation of food. The evidence was too fragile to hold that the deceased persons were owners of goods travelling along with the goods. The liability cast on the insurance company was certainly not possible in the light of the law of the Supreme Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, .

3. The compensation assessed on the insurance company was therefore not justified. The entire amount of compensation ought to have been directed only as payable by the owner of the vehicle and the driver who had been guilty of his negligent act.

4. The award stands modified exonerating the insurance company and making only the owner and driver as liable. In this case when the appeal was filed, the Court has granted stay for 50% of the amount. Consequently, if the claimants have recovered 50% of the amount from the insurance company, the insurance company will apply for restitution for recovery only by proceeding against the owner and driver and not against the claimant. For the unrecovered portion of the award amounts already determined, the claimants shall have a right of recourse only against the owner and driver and not against the insurance company. The appeals by the insurance company are allowed to the above extent.

