
(2010) 08 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 889 of 1994

National Insurance Co. Ltd.	Vs	APPELLANT
Chand Chhabra and Others		RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (2012) ACJ 326 : (2012) 4 TAC 289

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kannan, J.—The insurance company challenges the liability on the ground that the vehicle had been actually transferred and the same had not been brought to the notice of the insurer. The contract of insurance will come to an end and the liability could not be fastened on the insurer. It was the further contention of the insurance company that one of the witnesses on the side of the claimant, Sunder Singh, PW 4, had admitted that all the passengers in the car had hired it as a taxi and the accident had taken place by the negligent driving of the driver of the taxi. The last contention raised was that the Tribunal determined the compensation at Rs. 3,16,000 for the representatives of the deceased, who was 37 years of age. The Tribunal adopted a multiplier of 16, which was high and runs counter to the several decisions of the Hon''ble Supreme Court with regard to the quantum and choice of multiplier. On the issue of liability of the insurer notwithstanding the transfer of the vehicle, the matter has been finally settled by a decision of the Hon''ble Supreme Court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , where the registered owner was contesting the case and the plea of transfer itself had been denied. The liability of the insurer to a passenger in a Comprehensive Policy was dealt with by the Hon''ble Apex Court in Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Company 1977 ACJ 343 (SC). In fact, subsequent to the judgment of the

Hon"ble Apex Court an amendment was made by the Tariff Advisory Committee by a circular dated 17.3.1978 to bind the insurer to liability accepting the interpretation as adopted by the Hon"ble Apex Court to section 95 of the old Motor Vehicles Act, 1939. The third party cover under the Comprehensive Policy then prevailing from 25.3.1977 was worded as follows:

The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect thereof for death or bodily injury to any person but except so far as it is necessary to meet the requirements of section 95 of Motor Vehicles Act, 1939. The wording of Comprehensive Policy before 25.3.1977 did not expressly cover the "occupants carried in the vehicle". However, in view of the ruling of the Hon"ble Supreme Court with the resultant position that there was no liability for occupants in a private car, TAC had deliberated the issue and came out with a circular dated 17.3.1978 which stated as follows:

Insurance Company's Liability in respect of Gratuitous Passengers conveyed in a Private Car--Standard Form for Private Car Comprehensive Policy - Section 11 - Liability to Third Parties.

I am directed to inform insurers that advises have been received from the Tariff Advisory Committee to the effect that since the industry had all these years been holding the view on liability the same practice should continue.

In order to make this intention clear, insurers are requested to amend clause 1 (a) of section II of the Standard Private Car Policy by incorporating the following words "death of or bodily injury to any person" appearing therein: "Including occupants carried in the motor car provided that such occupants are not carried for hire or reward.

I am accordingly to request insurers to make the necessary amendment on sheet 38 of the Indian Motor Tariff pending reprinting of the relevant sheet.

All existing policies may be deemed to incorporate the above amendment as the above decision is being brought into force with effect from 25.3.1977".

2. The circular makes it clear that the intention was never to deny cover for liability to occupants in a private car under a Comprehensive Policy. However, in view of the Supreme Court judgment, lest it be applied even for a Comprehensive Policy, it was decided to amend the policy to clarify and expressly hold out that such occupants are covered under a Comprehensive Policy. Accordingly, the policy wording in section II was modified as follows:

the company will indemnify the insured...against all sums which the insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except

so far as it is necessary to meet the requirements of Motor Vehicles Act, the company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(Emphasis added)

3. Although circular was dated 17.3.78, TAC made the amendment retrospectively effective from 25.3.1977, the date of the Supreme Court judgment in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Company* 1977 ACJ 343 (SC), apparently to give the benefit of the amendment to all subsequent policies.

4. Thereafter insurers have not disputed liability for occupants in a Comprehensive (now Package) Policy. In fact attempt to do so initially was overruled in *Harshvardhatiya Rudraditya through his next friend Shri Govindbhai D. Parmar and Another Vs. Jyotindra Chimanlal Parikh and Others*, , whereafter taking note of the TAC circular and the amendment to the policy, Gujarat High Court held the insurer liable on the basis of the intention being always to cover such liability. Although as a proposition of law there may be no liability under the Motor Vehicles Act as held by the Supreme Court in *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Company* 1977 ACJ 343 (SC), when the policy has been amended to expressly cover occupants, it was held that there cannot be any dispute on liability, by relying upon the Apex Court judgment. Also see 5-Judge Bench decision of Gauhati High Court in *New India Assurance Co. Ltd. Vs. Satyanath Hazarika and Others*, : *Sagar Chand Phool Chand Jain v. Santosh Gupta*, 1985 ACJ 585 (Delhi); *Oriental Fire and General Insurance Co. Ltd. Vs. Sanatan Pradhan and Another*, *Bhagaban Pradhan and Others*, *Daitari Pradhan and Another* and *Hemanta Pasayat and Another*, all dealing with the TAC circular and consequent liability of insurer to gratuitous occupants in a private car. In fact the 5-Member Bench of Gauhati High Court has held that although TAC circular gave effect to amendment for policies after 25.3.1977, still liability would be enforced even for all claims pending on that date.

5. In view of the stated position through the circular issued by the TAC, the liability of the insurance company for a passenger in a private vehicle was fully covered if there was a Comprehensive Policy. The liability of the insurer cannot, therefore, be excluded in such a circumstance.

6. As regards the contention that the vehicle had been used as a taxi car, the learned counsel appearing on behalf of the owner would contend that it was nobody's case through the pleadings that the car had been used as a taxi and there had been any violation of the terms of the policy. A chance statement given by a witness cannot bind the claimants, for the parties went to trial on the basis of full-fledged pleadings and since the violation of the terms of the policy itself had not been urged by the insurer, he cannot utilise the statement of witness, PW 4, as constituting an admission against the claimant. I accept the contention of the counsel by the owner and find that in the absence of specific pleadings,

the insurer will not be able to deny the indemnity to the insured on the ground that there had been any violation of the terms of policy.

7. On the question of quantum, the choice of multiplier was definitely wrong but still having regard to the fact that the amount awarded for the death of a person, who was aged 37 years and who was also working as Tehsildar and had three small children, a widow and a mother, the extent of dependence could not have been reduced by 1/3rd nor could the Tribunal have considered the issue of quantum without reference to the increase in emoluments. In the ultimate analysis, the determination of compensation of Rs. 3,16,000 could seem to be justified, for a reduction of multiplier if it is to be done, the case suggests increase in the value of the multiplicand. I do not want to undertake such an exercise to quibble for a few thousand of rupees and retain the award as has been assessed by the Tribunal. Appeal by the insurance company, under the circumstances, is dismissed.