
(2008) 04 P&H CK 0117
In the Punjab And Haryana At Chandigarh

National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Balvir Kaur and Others		RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2009) ACJ 1917 : (2008) 152 PLR 784 : (2008) 4 RCR(Civil) 706

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Puri, J.—This is an appeal directed by National Insurance Company Limited, respondent No. 3 before the Tribunal, against the award dated 8.2.1997 passed by Sh. S.S. Lamba, Motor Accident Claims Tribunal, Kurukshetra, vide which the claim petition preferred by Balvir Kaur-widow, Paramjit Singh and Piara Singh-minor sons, Sukhjinder Kaur-minor daughter, on account of death of Harminder Singh in a motor vehicular accident, was accepted and an amount of Rs. 4,55,000/-alongwith interest @ 12% per annum from the date of filing of claim petition till realization of the amount, was awarded against all the respondents before the Tribunal.

2. Briefly stated, the facts of the case are that on 2.4.1996 at about 7.30 A.M., the deceased was returning from his office Shahabad Markanda after night duty. He was on his way to village Rattangarh on his scooter No. HR-07-0269. The deceased was driving the said scooter at a slow speed and on its due left side observing all traffic rules. When the deceased reached near Rattangarh turn, he signaled for taking turn but in the meanwhile a Maruti Esteem Car No. DL-3CF-2718 came from behind which was being driven by respondent No. 2 Bharat Deep Badhera, at a very high speed, rashly and negligently. Respondent No. 1, without blowing any horn, dashed against the scooter of deceased from behind. The deceased fell on the road and sustained multiple injuries. The accident was witnessed by Siri Niwas Sharma s/o Ram Nath of village Rattangarh.

3. Respondent No. 2-owner of the car did not appear before the Tribunal and as such was proceeded ex parte.

Respondent No. 1 filed written statement alleging that no accident had taken place with the vehicle in question.

4. The Insurance Company filed separate written statement on the same line and taking usual plea that driver of the vehicle was not holding a valid driving licence. The learned Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of respondent No. 1? OPP

2. If issue No. 1 is proved then to what amount of compensation the petitioners are entitled to receive and from whom? OPP

3. Whether respondent No. 1 was not holding valid driving licence? OPP

4. Relief.

The petitioner appeared as her own witness and also examined PW-2 Siri Niwas, witness of the accident besides tendering certain documents.

5. On the other hand, respondents tendered Mechanical test report of the vehicle as Exhibit R-I and closed the evidence.

Learned Tribunal returned the findings on all the issues in favour of the claimants and consequently, awarded an amount of Rs. 4,55,000/- to the claimants alongwith interest @ 12% per annum from the date of filing of claim petition till its realization. The liability of respondent No. 1-driver, respondent No. 2-owner and respondent No. 3-the Insurance Company, was held joint and several.

6. Feeling dissatisfied with the above said award, the Insurance Company has preferred the present appeal.

Alongwith the appeal, an application u/s 170 of the Motor Vehicles Act, 1988 (hereinafter to be mentioned as "the Act"), for permission to prosecute the appeal on merits, has been filed.

7. It is pleaded in the application that under the terms of the policy of Insurance Company, the National Insurance Company Limited, has reserved a right to them to take over the defence of the case in the name of the insured as per the terms of the policy of Insurance and defend it in his name and on merits. Under the above said condition, the Insurance Company has a right to take over the defence and prosecute the claim. The owner of the car did not appear before the Tribunal and was proceeded ex parte. The Insurance Company wants to prosecute the appeal both on the question of negligence as well as on the question of compensation, on merits. The owner has not filed any appeal and as such he has colluded with the applicant. So permission u/s 170 of the Act, has been sought.

8. Learned Counsel for the appellant has argued on the same line for acceptance of application u/s 170 of the Act, as per pleading in the application.

I have carefully considered the submission made by Counsel for the appellant, but do not find any force in that submission. The policy has been placed on the record as Exhibit R-2 but the learned Counsel for the appellant could not draw my pointed attention vide which the Insurance Company has been authorized to take over the defence of the case in the name of insured. So the basis of application is not available to the Insurance Company.

10. No application u/s 170 of the Act was moved before the Tribunal nor the Tribunal allowed the appellant to contest the claim petition on merits. There is no material on the record of the case to warrant the conclusion that respondent No. 2 anywhere has colluded with the claimants. The very fact that respondent No. 2 is ex parte and has not preferred the appeal, does not warrant the conclusion that there is any collusion between the Insurance Company and the claimants. The driver of the vehicle has contested the claim petition before the Tribunal. In the authority reported as Shankarayya and Another Vs. United India Insurance Co. Ltd. and Another, , it has been held by the Hon"ble Supreme Court that Insurance Company was not competent to file appeal on merits before High Court in case no permission has been granted by the Tribunal u/s 170 of the Act.

11. In that case the owner and driver of the vehicle appeared before the Tribunal but did not file any written statement. The Insurance Company did not obtain the order of Tribunal u/s 170 of the Act and as such it was held that Insurance Company is debarred from filing an appeal on merits.

12. Again the Apex Court in the authority reported as National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , has held that the Insurance Company cannot prefer appeal without obtaining the permission u/s 170 of the Act. Admittedly, there is no permission granted by the learned Tribunal to allow the Insurance Company to contest the claim petition on merits. Seeking permission for the first time in appeal u/s 170 of the Act, without pointing put that Insurance Company has reserved a right to take over defence of the case in the name of the insured, as per terms of the policy of insurance, the application u/s 170 of the Act is without any substance and the same stands dismissed.

Since, there is no permission of the learned Tribunal to contest the claim petition on merits and after dismissal of his application u/s 170 of the Act by this Court, the appeal preferred by the Insurance Company is not maintainable in view of the authorities in Shankarayya's case (supra) and Nicolletta Rohtagi's case (supra).

13. On merits also, there is no evidence which warrants interference in the finding of negligence by respondent No. 1. Respondent No. 1 has not come into the witness box to deny about the accident. The witness PW-2 Siri Niwas, has categorically stated that accident had taken due to rash and negligent driving of offending vehicle by respondent No. 1. This witness has categorically stated that

offending vehicle hit the scooter of the deceased from the back. That circumstance itself proves the negligence of respondent No. 1.

On quantum also, the amount could not be said to be excessive. The multiplier has been assessed as 11 taking the age of the deceased as 49 years. The deceased was drawing salary of Rs. 5,294/-. The dependency has been taken as Rs. 3,400/- per month and on that account, the amount of Rs. 4,55,000/- has been assessed. Another amount Rs. 6,200/- was assessed on account of funeral expenses. The deceased was a Government employee and there would have been a chance of promotion. So taking into account all these circumstances, the amount of Rs. 4,55,000/- assessed by the Tribunal cannot be said to be on higher side.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.