(1999) 05 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from the Order No. 1193 of 1999 in Civil Misc No''s. 7315-CII, 7316-CII, 7317-CII and 7318-CII of 1999

National Insurance Company Limited — APPELLANT

Vs

Bala and Others — RESPONDENT

Date of Decision : 26-05-1999

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2000) 1 ACC 212 : (2001) ACJ 824 : (1999) 123 PLR 796 : (1999) 4 RCR(Civil) 101

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : R.M. Suri, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This order will dispose of three first appeals directed against the award dated 24.07.1998 passed by the Motor Accident Claims Tribunal, Rohtak awarding a sum of Rs. 2,88,000/- alongwith interest at the rate of 10% per annum as compensation to the claimants in each of the three claim petitions filed by the heirs of the deceased.

2. Ram Kumar, Jagdish, Mir Singh, Shri Kishan and Ramesh were travelling together on 17.10.1997 in tractor-trolley which was being driven by Lilu alias Sukhbir. When they reached near village Rohad, it started raining and the driver of the tractor parked the tractor trolly on the left side of the road. They all got down from the trolly and sat beneath it. It was about 6.00 p.m. bus bearing registration No. DL-IP-6217 owned by Delhi-Bhiwani Transport Company Limited and driven by Shyam Lal respondent came from Delhi side and struck against the trolly. As a result of this collision, front portion of the tractor trolly was broken and the trolly turned turtle. Lilu alias Sukhbir, Jagdish and Shri Kishan died as a result of the injuries sustained by them whereas Ram Kumar, Mir Singh and Ramesh were injured in the accident. Six claim applications were filed before the

Tribunal three of which were filed by the heirs of the deceased out of which the present appeals have arisen.

3. The claim applications were contested by the respondents including the National Insurance Company which had insured bus No. DL-IP-6217. In the written statement filed by the Insurance Company, a preliminary objection was taken to the effect that the driver of the bus was not holding a valid driving licence. Since the counsel for the Insurance Company has contested the liability of the Company on the ground that the driver did not possess a valid driving licence, it is necessary to reproduce the preliminary objection No. 3 as taken in the written statement which reads as under:-

"That the driver of bus No. DL-IP-6217 was not holding any valid driving licence and if it is proved that he was holding any licence, then the same was forged and bogus and in the absence of the licence the Company has no liability to pay any compensation."

4. All the six claim applications were consolidated and from the pleadings of the parties, the following issues were framed:

1. Whether the accident in question resulting into --

(1) death of Sukhbir alias Lilu;

(2) death of Krishan alias Pappu;

(3) Jagdish alias Jaggi;

(4) injuries to Mir Singh alias Bir Singh;

(5) injuries to Ram Kumar

(6) injuries to Ramesh

took place due to rash and negligent driving of bus No. DL-IP-6217 by respondent No. 1 Shyam Lal? OPP.

2. If issue No. 1 is proved, to what amount of compensation, the petitioners of Petition No. 89 of 1997 titled Ram Niwas v. Shyam Lal, No. 91 of 1997 titled Bir Singh v. Shyam Lal, No. 133 of 1997 titled Bala v. Shyam, petition No. 132 of 1997 titled Jagwanti v. Shyam Lal and Petition No. 147 of 1998 Ramesh v. Shyam Lal and Ors. are entitled to and from whom? OPP.

3. Whether the petitions are bad for non-joinder of necessary parties as alleged? OPP.

4. Relief.

5. On a consideration of oral and documentary evidence led by the parties, the Tribunal came to the conclusion that the accident took place on account of rash and negligent driving by Shyam Lal driver of the aforesaid bus. Issue No. 1 was, therefore, decided in favour of the claimants and against the respondents. Issue

Nos.2 and 3 were also decided in favour of the claimants and against the respondents and it was held that the heirs of each of the three deceased were entitled to a sum of Rs. 2,88,000/- as compensation alongwith interest at the rate of 10% per annum from the date of the petition till the date of actual payment. All the three respondents including the Insurance Company were held jointly and severally liable to pay the compensation. Hence the present appeals by the Insurance Company.

6. The only argument advanced by the learned counsel for the appellant is that the Insurance Company is not liable to pay the compensation because driver of the offending vehicle was not holding a valid driving licence at the time of the accident and in any case the licence produced had not been endorsed for carrying passengers and, therefore, it was not valid.

7. We have heard counsel for the appellant and find no merit in his contentions. In the written statement filed before the Tribunal the pleas taken by the Insurance Company was that the driver of the bus did not hold a valid driving licence and if he held one the same was forged find bogus and that in the absence of the licence the company was not liable to pay compensation. The driving licence has been produced on the record of the Tribunal as Exhibit R-12 and a perusal of the same shows that it authorises Shyam Lal to drive a heavy motor vehicle. The bus carrying passengers is undoubtedly a heavy motor vehicle and in terms of the licence he was authorised to drive the same. The company did not produce any evidence whatsoever to show as to how this licence is invalid and whether it required any further endorsement. Be that as it may, the Insurance Company did not even claim an issue before the Tribunal regarding the validity of the driving licence. Not only this, if one reads the preliminary objection taken by the Insurance Company before the Tribunal, it is clear that the objection is as vague as it could be and no definite stand has been taken therein. It is pleaded that the driver does not possess a valid driving licence and if it is proved that the driver possessed a driving licence the same is forged and bogus. Since no issue was claimed in this regard the company did not lead any evidence to show that the licence was forged or bogus. It appears that the Insurance Company as a matter of course has taken a vague plea regarding the validity of the driving licence so as to escape its liability. This practice, in our opinion, deserves to be deprecated. An Insurance Company should raise objections where on scrutiny it prima facie feels that the licence is either bogus or fake. Vague and general objections must be avoided so that the claim petitions can be expeditiously disposed of. This vague and indefinite plea was taken before the Tribunal but no issue was claimed on its basis and having led no evidence, the company cannot be allowed to press that plea for the first time in appeal before this Court.

No other point was raised.

8. In the result, there is no merit in the appeals and the same.

