
(2006) 03 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1379 of 2006

National Insurance Company Limited

APPELLANT

Vs

Kamlesh Kaur and Others

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2)

Citation : (2007) 1 ACC 796 : (2008) ACJ 927 : (2006) 144 PLR 83 : (2006) 3 RCR(Civil) 634

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Inderjit Sharma and R.C. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This judgment shall dispose of F.A.O. Nos. 1379 and 1380 of 2006 as these appeals have been preferred against the composite award dated 23.1.2006, passed by the Motor Accident Claims Tribunal, Yamunanagar at Jagadhri, while deciding M.A.C.T. Case Nos. 87 and 88 of 2004. The facts have been taken from F.A.O. No. 1379 of 2006.

2. This is an appeal filed u/s 173 of the Motor Vehicles act, "1988 (for brevity, "the Act"), prays for setting aside the award dated 23.1.2006, pronounced by the Motor Accident Claims Tribunal, Yamunanagar at Jagadhri (for brevity, "the MACT"). The claimant-respondents have been awarded a total sum of Rs. 3,00,000/- Kamlesh Kaur, Kamaljit Singh (minor) and Raghvinder Kaur (minor) in M.A.C.T. Case No. 87 of 2004 against which instant F.A.O. No. 1379 of 2006 has been filed. In the other case i.e. M.A.C.T. Case No. 88 of 2004, subject matter of F.A.O. No. 1380 of 2006, the claimant-respondent Raghvinder Kaur has been awarded a sum of Rs. 75,000/- for the injuries suffered by her. The M.A.C.T. has found that the accident on 27.9".2004, had taken place on account of rash and negligent driving of the offending Dumper No. HR 3 8-6705. In support of the finding, the statement of Raghvinder Kaur, claimant-respondent No. 3, who was a

pillion rider of motor cycle of her father (Karnail Singh) has been cited. It is appropriate to mention that Raghvinder Kaur has sustained injuries in the accident. The statement of PW-5 and other eye-witnesses has also been relied upon. F.I.R. Ex.P-5 has also been registered against the driver-respondent No. 4. The M.A.C.T. rejected the argument that there was a requirement of route permit for goods carriage vehicle and since the offending vehicle did not have any route permit, the insured has violated the terms and conditions of the insurance policy. The reasoning is available in para 23 of the award of the MACT. Firstly, it has been held that the onus to prove the requirement of a route permit for a "goods vehicle" was placed on the Insurance Company-appellant as is evident from the perusal of Issue No. 4. No witness has been produced nor any document has been placed on record to prove the fact that the offending vehicle was without a route permit and that such a permit was required within the State of Haryana. The Registration Certificate of the vehicle was produced by PW-2 Suman Jit Singh, Criminal Ahlmad, from criminal case file but no suggestion was given to him by the Insurance Company-appellant that the said vehicle was without any route permit and that there was any such entry to that effect in the Registration Certificate itself. Therefore, the M.A.C.T. did not permit reliance on a judgment of the Hon'ble Supreme Court in the case National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, (this judgment has been described as unreported judgment).

3. Learned Counsel for the Insurance Company-appellant has raised the same argument once again stating that route permit in respect of goods vehicle was also required even if it was plying within State of Haryana. However, he has not substantiated his argument either by citing any statute or rule or any judgment.

4. Having heard the learned Counsel, we are of the view that the M.A.C.T. has taken the correct view by awarding a meager sum of Rs. 3,00,000/- by taking income of the deceased Karnail Singh as that of an agricultural labour, which is Rs. 2,400/- per month. After allowing deduction of 1/3rd, it has calculated the same to be Rs. 1,600/- per month. A multiplier of 15 (1600 x 12 x 15) has been applied to arrive at total income of Rs. 2,88,000/- in addition to the compensation on account of loss of estate, loss of consortium and funeral expenses. Accordingly, a total amount of Rs. 3,00,000/- has been awarded, which by no stretch of imagination could be considered excessive. The aforementioned compensation has to be shared by the widow and two minor children of the deceased Karnail Singh as per the direction in the award. A separate award in respect of Raghbinder Kaur, claimant-respondent No. 3 has been awarded who had suffered injuries in the accident, which again is modest amount of Rs. 75,000/-. Her physical disability has been assessed to 15% and accordingly compensation of Rs. 30,000/- has been awarded. The expenditure on account of medical treatment has been assessed at Rs. 24,000/- and compensation for pain and suffering has been awarded to the tune of Rs. 6,000/-. Compensation of Rs. 10,000/- on account of payment to helper during the period of treatment and on account of future loss of income due to medical

operation to the tune of Rs. 5,000/- has been awarded.

5. The argument that a route permit was required within the State of Haryana, raised by the learned Counsel for the Insurance Company is devoid of merit because it was not the pleaded case of the Insurance Company-appellant before the M.A.C.T. No witness or document has been produced on record by the Insurance Company-appellant to show that no "permit" was obtained by the owner of the vehicle or any "route permit" for a goods vehicle within the State of Haryana was required. The Insurance Company-appellant even failed to cross examine the Criminal Ahlmad, who had appeared as PW-2 alongwith the Registration Certificate of the offending vehicle to show as to whether the vehicle was registered as a "goods vehicle" or the vehicle was granted any permit. It may be true that a permit for goods carrier may be required u/s 66 of the Act but there is no requirement of acquiring a route permit for such a vehicle within the State as projected by the Insurance Company-appellant. In any case it has to be proved on record that the vehicle was not granted any permit. The defences of the Insurance Company-appellant are confined to those which have been referred to in Sub-section (2) of Section 149 of the Act, particularly with regard to liability towards third party. In that regard reliance may be placed on a judgment of the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . It has been laid down by the Hon"ble Supreme Court that breach of condition of a policy committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if it wishes to avoid liability. In the summery of finding in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be provided to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

6. In the present case, the Insurance Company-appellant has miserably failed to discharge the aforementioned onus. Neither any witness has been produced nor any document has been tendered in support of the aforementioned contention. The Insurance Company-appellant has even failed to cross examine the witnesses of the claimant-respondents like PW-2 Shri Suman Jit Singh, Criminal

Ahlmad, on the aforementioned issue, who had appeared alongwith the Registration Certificate of the offending vehicle. Therefore, the argument raised is completely devoid of merit and is hereby rejected.

7. No other argument has been raised.

8. For the reasons mentioned above, these appeals fails and the same are dismissed.