
(2014) 01 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 8 of 1997

National Insurance Company Limited

APPELLANT

Vs

Rajwati and Others

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(16), 2(21)

Citation : (2014) 01 P&H CK 0065

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Bhupesh Dogra, Advocates for the Appellant; Sanjay Majithia, Senior Advocate and Jatinder Kumar, Advocates for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the National Insurance Company Limited against the award dated 26.9.1996 passed by the Motor Accident Claims Tribunal, Sonapat (in short "the Tribunal").

2. The relevant facts necessary for adjudication of the present appeal as narrated therein may be noticed. Umed Singh, aged 35 years was employed by Babu Ram son of Nanak Chand for driving his truck No. DL-1G-8198. He was receiving Rs. 3000/- per month as salary and Rs. 50/- per month as diet money from his employer. On 20.3.1995, Umed Singh was going to Bayavar with the truck which was being driven at a moderate speed. Rattan Singh cleaner was also accompanying Umed Singh. At about 2.00 PM, when the truck being driven by Umed Singh was proceeding in the area of village Sadariya, another truck bearing No. RJZ-9531 being driven by Mumtaz in a rash and negligent manner came from the opposite direction and dashed into truck No. DL-1G-8198 resulting in severe injuries to Umed Singh who succumbed to the said injuries on way to the hospital. FIR No. 30 dated 20.3.1995 was registered at Police Station Adarsh Nagar, Ajmer. The claimants who are dependants of the deceased Umed Singh, filed the petition claiming compensation of Rs. 10 lacs. Two separate written statements were filed, one by the driver and owner of the offending

vehicle and the other by the Insurance Company controverting the averments made in the claim petition. From the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether the motor vehicle accident resulting in the death of Umed Singh occurred because of rash and negligent driving of truck No. RJZ- 9531 by Mumtaz respondent No. 1? OPP

2. Whether the petitioners were dependents upon Umed Singh deceased and they are entitled to any compensation? If so to what amount and from whom? OPP

3. Whether respondent No. 1 was not holding an effective driving licence at the time of accident? If so to what effect? OPR3

4. Whether the petition is bad for non-joinder of necessary parties? If so its effect? OPR

5. Relief."

3. Issue No. 1 was decided in favour of the claimants holding that the accident occurred due to rash and negligent driving of truck No. RJZ-9531 by Mumtaz driver. Issues No. 2 and 3 were taken up together being interconnected and were decided in favour of the claimants holding the owner, driver and Insurance Company jointly and severally liable to pay the compensation. A total sum of Rs. 3,91,000/- was awarded as compensation to the claimants. Issue No. 4 was not pressed. Accordingly, the Tribunal vide award dated 26.9.1996 allowed a sum of Rs. 3,86,000/- as compensation in equal shares of the claimants and an amount of Rs. 5000/- was awarded as compensation for loss of consortium to Rajwati widow of the deceased. The said compensation was awarded with interest at the rate of 15% per annum from the date of filing of the petition till its realization. Feeling aggrieved, the Insurance Company has approached this Court by way of instant appeal.

4. Learned counsel for the appellant-National Insurance Company Limited submitted that the driver of the vehicle, namely, Mumtaz was not holding a valid driving licence for driving of a heavy motor vehicle. According to the learned counsel, findings on issue No. 3 had been wrongly recorded by the Tribunal.

5. On the other hand, learned counsel for the claimant- respondents besides supporting the award passed by the Tribunal submitted that the finding recorded by the Tribunal that there was a valid driving licence held by driver Mumtaz is based on record and does not call for any interference.

6. After hearing learned counsel for the parties, I do not find any merit in the appeal.

7. In order to effectively adjudicate whether driver of truck No. RJZ-9531, Mumtaz was holding a valid driving licence in respect of heavy motor vehicle or not, it would be advantageous to refer to the various provisions of the Motor

Vehicles Act, 1988 (in short "the Act"). Further, Section 2(16) of the Act defines heavy goods vehicle as any goods carriage the gross vehicle weight (i.e. unladen weight) of which exceeds 12000 kilograms, which reads thus:-

"Section 2(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms."

8. Further, Section 2(21) of the Act defines light motor vehicle as a transport vehicle or omnibus the gross vehicle weight (i.e. unladen weight) of which does not exceed 6000 kilograms. It reads thus:-

"Section 2(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 6,000 kilograms."

9. It was not disputed that unladen weight of the truck bearing registration No. RJZ-9531 which was driven by Mumtaz driver on account of which the accident had occurred was 5445 kilograms as per registration certificate Ex.R2 and its laden weight was 14375 kilograms.

10. The Tribunal after noticing the provisions of Section 2(16) and 2(21) of the Act while deciding issue No. 3, concluded as under:-

"In the case in hand the unladen weight of truck No. RJZ-9531 which is the offending vehicle is shown as 5445 kilograms in the registration certificate Ex.R-2 and its registered laden weight as 14375. In view of the law laid down by the Hon"ble High Court of Karnataka in Oriental Insurance Company Ltd. Vs. Hazira Begum (supra) a goods carriage less than 6000 kilograms of unladen weight is a light motor vehicle. The unladen weight of the offending vehicle No. RJZ-9531 was 5445 kilograms, according to copy of registration certificate Ex.R-2. Even if it is assumed that the licence No. 79421-T verified by the Local Commissioner Shri P.K. Bhagat relates to Mumtaz respondent No. 1, no condition of the policy was violated as respondent Mumtaz was holding a licence for driving light Motor vehicles at the time of accident. Moreover, the burden of proving that respondent No. 1 Mumtaz was not holding an effective driving licence at the time of accident lay upon the insurance company. Since the insurance company has not examined Mumtaz or any other witness to prove that Mumtaz was not holding an effective driving licence, the insurance company cannot escape liability on this ground in view of the law laid down in National Insurance Company Ltd. Vs. Abdul Majid and others (supra) by Hon"ble High Court of Rajasthan."

11. In view of the above, I do not find any merit in the appeal and the same is hereby dismissed. No costs.