
(2004) 07 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 3307 of 2004

National Insurance Company Ltd.

APPELLANT

Vs

Mohanjit Kaur and Others

RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2004) 3 ACC 809 : (2005) ACJ 654 : (2004) 138 PLR 258 : (2004) 4 RCR(Civil) 130

Hon'ble Judges : S.S. Nijjar, J;Nirmal Singh, J

Bench : Division Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—We have heard the learned counsel for the appellant at length and perused the paper-book.

2. Mr. Suri has vehemently argued that in this case, the claimants have played a fraud. In fact the vehicle which was insured with the appellant was not involved in the accident. It is also argued that although the appellant was permitted to defend the proceedings, yet the MACT has illegally closed the evidence of the appellant. Even bailable warrants were issued for the production of the witnesses. Therefore, the appellant cannot be held liable for not producing the entire evidence.

3. We have considered the submissions made by Mr. Suri. We are of the considered opinion that no relief can be granted to the appellant. A perusal of the award shows that the deceased met with an accident on 26.11.1998 at about 7.30 P.M. The offending vehicle was stated to be truck bearing No. PB-12A-4552, which is alleged to have come from behind the scooter of the deceased at a very high speed and struck against the scooter on which the deceased was riding. The accident was witnessed by one Gurdev Singh son of Niranjana Singh. The

appellant had taken up a preliminary objection that the claim petition is not maintainable. It was also stated that the appellant is not liable to pay compensation to the claimants since respondent No. 2 did not have a valid and effective driving licence at the time of the alleged accident. After considering the entire evidence led by the parties, the MACT has come to the conclusion that both the eye-witnesses Gurdev Singh, PW2 and Baljinder Singh, PW3 had supported the case set up by the claimants by giving ocular evidence in Court. These witnesses were cross-examined in Court and the evidence could not be shaken. It has also come in the evidence that the offending vehicle was insured with the appellant. The MACT has further come to the conclusion that the driver of the offending vehicle was not having a valid driving licence. Having come to the aforesaid conclusion, recovery rights have been reserved in favour of the appellant. This apart, we are of the considered opinion that the plea of fraud which has been taken by Mr. Suri, learned senior counsel cannot be permitted to be raised in this Court as the same was not raised before the MACT in the written statement. It is settled proposition of law that facts not specifically pleaded cannot be proved. No amount of evidence can be taken into consideration on facts, which have not been pleaded. It is also settled proposition of law that allegations of fraud are to be proved beyond reasonable doubt as in criminal proceedings. Allegations of fraud cannot be held to be proved as in civil actions on balance of probabilities. Even otherwise, arguments raised by Mr. Suri are without merit, as there is no order of the MACT on record granting permission to the appellants u/s 170 of the Motor Vehicles Act. In such circumstances, we find that the award of the MACT does not suffer from any legal infirmity.

In view of the above, the appeal is dismissed.