
(2002) 04 P&H CK 0039
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 801 of 2002

National Insurance Company Ltd.

APPELLANT

Vs

Nebh Raj and Others

RESPONDENT

Date of Decision : 26-04-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 149
Motor Vehicles Act, 1988 — Section 149

Citation : (2004) ACJ 209 : (2002) 3 RCR(Civil) 98

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—By this common Order 1 propose to dispose of J1 six connected Civil Revisions bearing Nos. 801 to 806 of 2002, as all these revisions have been filed challenging the award rendered by learned Motor Accident Claims Tribunal dated 7.9.2001, whereby respondents in all these revisions were held entitled to various amounts of compensation.

2. Brief facts of the case reveal that number of persons, who were members of a marriage party, after solemnisation of the marriage were returning to village Rajapur by a tractor trolley on 3.7.1996. This tractor was being driven by Kashmira and when the tractor trolley carrying the marriage party reached village Barofi on G.T. Road, a truck bearing No. HR-41/0211 came from Panipat side which was being driven by Sukhwant Singh in a rash and zing zag manner and also negligently. The same struck against the tractor trolley on its left side. The accident resulted into injuries to number of persons travelling in the tractor trolley, some of whom succumbed to their injuries. Number of claim petitions that were filed under the provisions of Motor Vehicle Act were consoli dated by Shri Manjit Singh, Motor Accident Claims Tribunal, Panipat and disposed of by a

common award dated 7.9.2001. Out of so many claim petitions that were consolidated, as referred to above, the petitioner, Insurance Company, has filed these six revisions.

3. Mr. Suri, learned counsel representing the petitioner, on the basis of judgment recorded in *United Insurance Co. Ltd. v. Bhushan Sachdeva and Ors.*,¹ (2002) 130 P.L.R. 436 (SC), contends that the petitioner Insurance Company is an aggrieved party and, thus, it is open to the Insurance Company to invoke the right u/s 173 of the Act as the insured in the present case has failed to appeal against the award passed by the Tribunal.

4. In view of the judgment referred to above, learned counsel was heard on merits of the case but insofar as issue pertaining to the accident having been taken place due to rash and negligent driving of the driver of the offending vehicle is concerned, he could urge nothing that may detract from the findings on the said issue recorded by learned Tribunal. Even though, nothing substantial has been urged under Issue No. 1, it may, however, be mentioned that in order to prove that accident had taken place in the way and manner as pleaded in the petition, the claimants examined Hem Raj, PW-4, who was travelling in the tractor trolley, which met with an accident, along with his wife and daughter as also mother. He fully supported the version of the claimants. The evidence given by the Hem Raj was supported by Arjun. PW-1 and Veer Bhan, PW-2, who was injured in the same accident. The claimants also examined Sunil Kumar, PW-3, Ahlmad from the Court of ACJM, Panipat, who stated that driver of the offending vehicle was facing trial under sections 279/337/338/304-A of Indian Penal Code. The claimants also brought on record copy of the report u/s 173 of the Code of Criminal Procedure relating to this very accident. Sukhwant Singh, driver of the offending vehicle did not step into the witness box to rebut overwhelming evidence produced on behalf of the claimants. On the basis of evidence, as mentioned above, this Court finds nothing wrong whatsoever in the findings of learned Tribunal pertaining to Issue No. 1 that it was because of negligence of respondent No. 1 that so many people travelling in tractor trolley had suffered injuries, some of whom had even died.

5. The only other contention of learned counsel pertains to fake driving licence of the driver of the offending vehicle, which gave rise to Issue No. 3. With a view to substantiate this plea, the petitioner, Insurance Company, produced letter of investigator Mark-A and the report of the Licensing Authority Mark-B and on that basis urged before learned Tribunal that licence obtained by the driver of the offending vehicle was fake. Learned Tribunal repelled the arguments on the aforesaid contention by observing "the argument of the learned counsel for the Insurance Company has no force. Mark-A, the report of investigator and Mark-B the report of Licensing Authority, Raipur, cannot be accepted as they have not been proved on the record as per the procedure prescribed and even have not been exhibited. It was the duty of the Insurance Company to summon the record from the Licensing Authority, Raipur and to prove that in fact the driving licence

held by Sukhwant Singh was fake. It does not lie in the mouth of the Insurance Company to get it argued that Sukhwant Singh, the driver of the truck was having no valid driving licence, when the Insurance Company after admitting the driving licence as correct paid the claim regarding the damage of the truck to the owner and at that time, they accepted the report of their investigator as correct. No action against any of the employees of the Insurance Company has been taken so far by the Insurance Company which could prove that no proper verification of the driving licence was done while granting the compensation regarding the damage of the truck. Once, the Insurance Company paid the compensation regarding the damage of the truck treating the driving licence as valid, then they have no right to challenge the driving licence held by the same driver when the compensation is claimed by the petitioner. The Insurance Company has failed to prove that the driving licence of the driver of the truck was invalid or fake. The onus was on the Insurance Company but the Insurance Company has failed to discharge, rather it is proved on the record that the driving licence owned by the respondent was valid as the same was treated as valid by the Insurance Company itself.

6. Mr. Suri contends that learned Tribunal did not allow the Insurance Company to lead evidence to prove that no licence had been issued by the Licensing Authority, Raipur, although an application for issuing commission had been filed. A sum of Rs. 1400/- was deposited in the Court, despite that, evidence was closed as the witness did not appear. On the basis of contention, as mentioned above, counsel says that in these circumstances, the Tribunal ought to have summoned the witnesses to prove the report of investigator of the Insurance Company and the concerned Licensing Authority from Raipur. In support of his contention, learned counsel has relied upon a judgment of this Court in *United India Insurance Co. Ltd. Vs. Seno and Others*, and another Division Bench Judgment of this Court in *National Insurance Co. Ltd. Vs. Smt. Bala Devi and Others*, .

7. This argument of the learned counsel, in the context of the facts and circumstances of this case, can not possibly be accepted. The counsel has made available to the Court an application dated 5.2.2001, seeking to examine Clerk of the Licensing Authority, Raipur by Commission. It has, inter-alia, been pleaded in the application aforesaid that on last date of hearing, i.e., 29.1.2001, the Licensing Clerk, Licensing Authority, Raipur, whose summons had already been obtained *dasti*, did not come present in Court despite service of the summons. Summons were received back late in the evening. It has then been pleaded that the said Clerk, who had not come present in Court despite service, should be summoned through *bailable warrants*. There is an alternative prayer contained in the application that if the Court might think it fit not to issue *bailable warrants*, Insurance Company would be prepared to deposit the *air free* and other expenses of the witness to enable him to undertake the journey as provided in Order 16 Rule 19(b). It is further in alternative that it has been prayed that the witness be got examined on Commission for which the Insurance Company would

be prepared to bear the requisite expenses. It appears that the application aforesaid came up for hearing on 9.2.2001 when following order was passed:-

"An application moved for summoning the witness or issuing of the Commission. Previously the witness summoned but on the summon, it is not clear which Clerk or the officer received the summon, so the witness again be summoned on filing of PF and registered cover for 20.4.2001. The Insurance Company if wants to summon any witness is at liberty to summon the witness on filing of PF and registered cover."

It appears that the Tribunal issued fresh summons to concerned Clerk as it was not clear as to who had received the summons sent earlier. The assertion of the appellant in its application dated 5.2.2001 that witness had not appeared despite service was not found to be correct and this order was neither challenged separately by way of revision at the relevant time nor is in question now as no arguments have been raised based upon the same. On the adjourned time, i.e., 20.4.2001, following order was passed:-

"No RW is present. A clerk was summoned as witness from Raipur. The summons were sent through registered cover. Now the respondent is directed to get the service of the witness effected by taking the summons dasti as well as through registered cover for 1.6.2001".

On the adjourned date, i.e., 1.6.2001, following order was passed:-

"No evidence of respondent No. 3 is present. Summons of Clerk from the District Transport Officer, Patiala (Punjab) received back with the report that he is to appear in another Court for today. Another witness has been summoned from Raipur. The distance between this place and Raipur is stated to be more than 500 Kms. the said witness can not be summoned beyond the distance of 500 Kms. So, the respondent No. 3 shall make the arrangement to produce the witness at own responsibility. Now the witness, Clerk from the district Transport Officer, Patiala (Punjab) again be summoned for 2.8.2001. the respondent No. 3 shall take the summons dasti."

On the adjourned date, i.e., 2.8.2001, following order was passed:-

"No evidence of respondent No. 3 is present. One witness was to be produced at own responsibility as the witness summoned was beyond the distance of 500 Kms. The said witness has not been produced. Another Clerk was to be summoned from the district Transport Officer, Patiala, and it was ordered that the summons be taken dasti. Neither the witness is present nor the summons taken dasti nor the PF was filed. Since the respondent No. 3 has already availed many opportunities, so I do not find any justification for granting more opportunity to the respondent No. 3. So, the evidence of respondent No. 3 is closed by the order of the Court. However, the respondent No. 3 can only tender in evidence the copy of insurance policy, letter of investigator and report of Licensing Authority. Now to come up for rebuttal evidence if any, and for arguments on

21.8.2001".

Order dated 2.8.2001, it appears, was also not challenged by way of revision. Before this Court as well nothing, based upon the order aforesaid, has been urged by learned counsel for the appellant. The facts of the case, as fully detailed above, would, thus, manifest that it is only in the midst of the evidence that a request was made to summon the witness, i.e., the concerned Clerk from Raipur by Commission and that too, as mentioned above, by way of second alternative prayer. The witness had since already been summoned by the appellant and had not been served. The appellant had, thus adopted a course of action and wanted to change it in mid stream and that too by a second alternative prayer. The Tribunal, on finding that the witness had since been summoned, directed the appellant to summon the said witness again at its own responsibility and while doing so, the Court put no embargo. In other words, the witness could be summoned either by depositing his air fare or by whatever mode the appellant desired. The various interim orders, reproduced above, would further manifest that the appellant was unable to summon and examine the witness from Raipur. It cannot, thus, be urged that the Tribunal did not allow the Insurance Company to prove that no licence had been issued by the Licensing Authority, Raipur, although an application for issuing the Commission had been filed.

In view of the discussion made above, no occasion at all arises to interfere with the findings of learned Tribunal under Issue No. 3 as well.

Finding no merit in this revision, the same is hereby dismissed in limine.