

(1987) 07 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 169 of 1983

New India Assurance Co. Ltd.

APPELLANT

Vs

Baldev Raj and Others

RESPONDENT

Date of Decision : 28-07-1987

Acts Referred:

Citation : (1988) 2 ACC 27 : (1989) 66 CompCas 444 : (1988) 93 PLR 408

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

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

Judgement

Gokal Chand Mital, J.—On October 20, 1980, Baldev Raj alias Baldev Singh, son of Jia Ram and Gurucharan Singh, who were constables in Punjal Police were passengers in bus PUR 5236 owned by Ambala Bus Syndicate Private Ltd., Ropar, and driven by Surta Singh on the Nangal-Ropar road. At about 10 a.m. near Sadabarat building, the bus overturned as a result of which Gurucharan Singh received fatal injuries and succumbed to the same on October 26, 1980, whereas Baldev Raj received serious injuries. Baldev Raj and the parents of Gurucharan Singh filed separate applications before the Motor Accidents Claims Tribunal (for short "the Tribunal "). Both the applications were separately tried but similar issues were framed about the negligence of the bus driver and the amount of compensation payable to the claimants.

2. The accident was not disputed. However, the negligence of the driver was denied. The Tribunal, by award dated November 11, 1982, came to the conclusion that the bus was overloaded and due to the negligence of the driver, the bus overturned. As regards the quantum of compensation, it came to the conclusion that Gurucharan Singh was getting Rs. 600 per month at the time of accident and was aged about 25 1/2 years and in the ordinary course of events would have continued to maintain his parents from his salary till their death. His contribution towards his parents was assessed at Rs. 400 per month. Annual dependency of parents was estimated at Rs. 4,000 and after applying multiplier

of 10, Rs. 40,000 were awarded to the parents of Gurucharan Singh.

3. As regards the injuries of Baldev Raj, it was found that he was getting Rs. 600 per month at the time of accident as a constable and that he had fracture of the spine with traumatic paraplegia, and he was kept on bed for a month in the hospital and was discharged with plaster jacket around his chest and abdomen which he had to wear for three months and thereafter also he was advised to lie in a plaster bed for a period of further one month. Even on August 7, 1982, the doctor had opined that he was unable to stand without any support and that the damage to the spinal cord was of permanent nature and that he had lost sensation below knee in both the legs and in his view, because of paralysis of the two legs below knee, he had developed 50 per cent disability. For the aforesaid injuries on different heads and counts, he was awarded compensation as follows:

Compensation for about 2 years loss of salary at the rate of Rs. 600 per month

Rs.

14,400

Loss of prospective income at the rate of Rs. 4,000 per annum

60,000

Pain, shock, suffering and loss of amenities of life

30,000

Medical treatment

3,000

Total

1,07,400

4. The liability of the insurance company was found to be limited to Rs. 50,000 for each accident victim and, therefore, the insurance company was to pay Rs. 40,000 to the parents of Gurucharan Singh and Rs. 50,000 out of Rs. 1,07,400 to Baldev Raj and the balance was payable by the Ambala Bus Syndicate P. Ltd. FAO No. 169 of 1983 has been filed by the insurance company against the compensation awarded to Baldev Raj and FAO No. 170 of 1983 has been filed by the insurance company against the award made in favour of the parents of Gurucharan Singh. Ambala Bus Syndicate P. Ltd. has filed separate cross-objections in the aforesaid appeals, claiming the dismissal of the claim applications after setting aside the award of the Tribunal. Cross-objections have also been filed by the claimants in both the appeals to claim enhanced compensation. Since they arise out of the same accident and common questions are likely to arise, they are being disposed of together.

5. Shri L.M. Suri, Advocate, appearing for the insurance company, has not

disputed the negligence of the driver of the bus nor has he disputed the amount awarded by the Tribunal below. His limited argument is that the insurance company had only a limited liability of up to Rs. 5,000 per passenger and the Tribunal was in error in fixing the liability of the insurance company at Rs. 50,000 per passenger.

6. While elaborating the argument, he has pointed out that on October 22, 1982, the evidence of the claimants was closed and November 5, 1982, was the first date given to them for producing their evidence. Immediately, on November 5, 1982, an application was moved before the Tribunal to direct the owner of the insured vehicle to produce the original policy of insurance in court because the original policy was with it and the insurance company had only an office copy thereof. The Tribunal passed an order dated November 5, 1982, below the application and the same is to the following effect:

" Heard. There is no plea of the insurer of the vehicle that they never mentioned to indemnify beyond the statutory liability. In the circumstances, there is no question of production of the policy and application is declined."

7. That day, arguments were heard and orders were reserved, for pronouncement on November 8, 1982. On November 8, 1982, the Tribunal entertained the application filed by the owner of the vehicle for production of the insurance policy. Without giving notice of the application to the insurance company, the Tribunal passed the following order on that date :

" Counsel for No. 2 made application for production of the policy of insurance stating that it is necessary in the ends of justice. Heard. The insurer's counsel also, on the last hearing, has given application for production but it was disallowed. Since the production of the policy will have a material bearing on the question of liability, I allow respondent No. 2 to produce the policy or its copy by November 10, 1982, particularly when the insured policy, copy of which is attached, shows the liability of insurer more than what is admitted by it in reply."

8. Notice of the application was not issued to the insurance company. Once the application of the insurance company was disallowed on November 5, 1982, how, on November 8, 1982, could the Tribunal have found that the production of the policy had a bearing on the question of liability. Before granting the application or receiving the evidence, opportunity should have been granted to the insurance company to vouchsafe the correctness of the policy which the insured was placing on record. Shri Suri has argued that they have taken a specific ground in the grounds of appeal and it is stated therein that a forged, incorrect and incomplete policy was placed on the record before the Tribunal behind their back and if opportunity had been granted by the Tribunal, they would have proved their stand.

9. After going through the record of the case, I find that Shri Suri is right. On November 5, 1982, their application for production of the original policy was dismissed with clear observations that it was nobody's case that the liability of

the insurance company was not beyond the permissible limit prescribed by the statute. According to the law as it existed when the accident took place, the liability of the insurance company was limited to Rs. 5,000 per passenger. That day, arguments were concluded and the case was fixed for orders for November 8, 1982. On November 8, 1982, behind the back of the insurance company, an application of the vehicle's owner was entertained and the order of the court dated November 8, 1982, shows that none was present on behalf of the insurance company and no notice of the application was given to it. Hence, it is clear that the insurance company had no opportunity to find out whether the policy produced on the record was a genuine one or not. Shri Suri then tried to show from his own record copies of the policy for the year 1980-81 and that of the previous years that liability of the insurance company per passenger was specifically stated to be Rs. 5,000 with a maximum liability in one accident not exceeding Rs. 50,000. I cannot commit the same mistake which the Tribunal has committed. The matter will have to be enquired into and opportunity will have to be granted to the insurance company to rebut the evidence produced by the insured. Ambala Bus Syndicate (P.) Ltd. is the owner of the vehicle and is not represented by a counsel. It has been served in appeal and I would be fully justified in proceeding ex parte. All the same, in the interest of justice, I would like to give an opportunity to them to be present when the insurance company produces evidence in rebuttal.

10. The accident had taken place in 1980 and the claimants have been denied substantial compensation because of the stay order passed by this court. To avoid delay, it will be proper to give an opportunity to the insurance company to rebut the evidence produced by the insured in this court. Let the insurance company produce evidence in rebuttal on August 20, 1987.

11. The Registry is directed to issue notice of the appeal to respondent No. 3 with specific mention in the notice that on August 20, 1987, the case will be taken up on which day the insurance company will lead evidence in rebuttal to prove that under the policy of insurance, the liability of the insurance company was limited to Rs. 5,000 per passenger and not Rs. 50,000 per passenger so that they may appear and take part in the proceedings.