
(2010) 06 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 394 of 1994

New India Assurance Co. Ltd.

APPELLANT

Vs

Gulab Chand Chorasya and Others

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 167

Workmens Compensation Act, 1923 — Section 147

Citation : (2011) ACJ 2248 : (2011) 1 TAC 577

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The appeal is by the Insurance Company taking up a plea that for the death caused to a driver of a truck which turned turtle, the Insurance Company shall not be liable since the driver himself was rash and negligent in the act. The Tribunal found that the liability by the Insurance Company is rooted on the principle that a claim before the Motor Accident Claims Tribunal is possible for a motor accident and a claim could have been filed either under the provisions of the Motor Vehicles Act or under the c.

The learned Counsel appearing on behalf of the Insurance Company contends that in order that a claim is validly laid before the Motor Accident Claims Tribunal, it cannot be done without proving negligence and in a case where the driver himself had been negligent in causing the accident, the appropriate remedy would have been only to secure compensation under the scale of compensation under the Workmen's Compensation Act.

2. Section 147 which requires a policy and the limits of liability lays down through the proviso u/s 147 that a policy shall not be required to cover the liability of death or injury arising out of in the course of employment other than the liability under the Workmen's Compensation Act for death or bodily injury. If a compulsory policy shall, therefore, include a cover for a workman all that the Motor Vehicles Act requires is the proof of the fact that the death or injury

resulted out of a motor accident. If a driver makes a claim against his owner, who was an insured, then the entitlement to proceed against the owner by the legal representatives through the provisions of Section 166 will not extend to a situation where the driver was himself a tortfeasor. It does not mean where the driver dies in a motor accident, the claim is not maintainable. However, if the accident has arisen out of a situation where the driver himself was not at fault and he could not be said to be a tortfeasor, then a proceeding against his own employer and the insurer is not barred under the provisions of Section 166 of the Motor Vehicles Act. It could include situations when there is a mechanical failure or when accident has been on account of instances of vis major. In this case, accident has arisen in a situation where a cow had darted across the road and when the driver tried to save the cow by taking a turn, the vehicle fell out of the road and capsized. The Tribunal had found that the accident had taken place without any fault on the part of the driver and hence, even the proceedings of a criminal complaint had been dropped. If there was no negligence on the part of the driver, then there is no merit in the contention that the proceedings could not be taken under the Motor Vehicles Act.

3. If a driver or his representative proceeds under the Motor Vehicles Act, which by virtue of an option u/s 167 of the Motor Vehicles Act is possible, then the scale of compensation need not be restricted only to what is provided under the Workmen's Compensation Act. The section reads thus:

167. Option regarding claims for compensation in certain cases.-- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

4. The Patna High Court has held in *New India Assurance Co. Limited v. Mohd. Yunis* (1996) 1 S.C.C. 442, that merely because the claimant was a workman, the compensation under the Motor Vehicles Act cannot be restricted to the scale as provided by the Workmen's Compensation Act. I affirm the same view. As observed earlier, it all depends on whether the accident was on account of the negligence of the driver himself or not, if it was not then the scale of compensation could be the just compensation as provided under the Motor Vehicles Act.

5. The Tribunal has assessed a compensation of Rs. 2,11,200/- taking the salary to be Rs. 1,830/- per month and arrived at a monthly dependency of Rs. 1,100/-. It has adopted a multiplier of 16 considering the fact that the person was only 30 years of age. The compensation arrived at is modest and no interference is called for. There is no need for even reducing the interest which was provided at 12% considering the fact that the Tribunal had adopted 16 multiplier which could have been 18 and has also taken the income to be only

Rs. 1,800/- when the Petitioner's claim was that the income was Rs. 4,000/- per month. The award of the Tribunal is confirmed and the appeal is dismissed. There shall be however no directions as to costs.