

(1983) 11 P&H CK 0061
In the Punjab And Haryana At Chandigarh

New India Assurance Co. Ltd.

APPELLANT

Vs

Lakshmi Devi and Others

RESPONDENT

Date of Decision : 18-11-1983

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1984) 1 ACC 159

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

S.S. Sodhi, J.—The controversy raised in this appeal is with regard to the extent of the liability of the Insurance Company for the amount awarded as compensation to the claimants.

2. The facts relevant to this matter are that Pran Nath Kapila, who was travelling in the car PUV 9192 was killed when this car went and hit into a truck parked on the road side. This happened on March 30, 1978. The tribunal holding that the accident here had been caused by the rash and negligent driving of the car driver, awarded a sum of Rs. 72,000/- as compensation to the claimants, they being the widow and the minor children of the deceased as also his widowed mother. All the respondents including the Insurance Company with which the car had been insured were held liable jointly and severally for the entire amount awarded.

3. It was the contention of Mr. L.M. Suri, counsel for the Insurance Company that u/s 95 of the Motor Vehicles Act, the Insurance Company is not required to cover liability in respect of passengers travelling in a vehicle involved in the motor accident. In this case, by virtue of a special premium having been paid by the insured, liability in respect of passengers stood covered to the extent of Rs. 15,000/- and consequently the Insurance Company could not be held liable for an amount exceeding this sum. He cited in this behalf the judgment of the Supreme Court in Pushpabai Purshottam Udeshi and Ors. v. Ranjit Ginning and Pressing Co. and Anr. 1977 A.C.J. 343, where it was held that the provisions of

Section 95 of the Motor Vehicles Act excluded the liability of the Insurance Company regarding risks to passengers. This was later followed by this High Court in Smt. Tarawanti and Ors. v. Gurmeh Singh and Ors. 1980 P.L.R. 644.

4. The point urged by Mr. J.R. Mittal, counsel for the claimants, on the other hand, was that the risk in respect of Prem Nath Kapila, deceased, must be taken to have been covered by the provisions of Section 95 of the Motor Vehicles Act, in view of the fact, that he was an employee of the owner of the car. The reference here being to the proviso to Sub-section (1) of Section 95 of the Motor Vehicles Act which provides that a policy of Insurance shall not be required :

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by a reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

In the context of the facts of this case, the essential point missed in this argument was that it was incumbent upon the claimants to show not only that there was a contract of employment between the deceased and the insured car owner, but also that he was a passenger in the car by reason of or in pursuance of such contract. In other words, merely being an employee could not bring the deceased under insurance cover.

5. The precedent provided by the Oriental Fire and General Insurance Co. Ltd. v. Ganchi Ramanlal Kantilal and Ors. 1979 A.C.J. 65 upon which great stress had been laid by the counsel for the claimants is clearly of no avail. The point raised there being quite separate and distinct from that arising in this case. What was stated in that case was that in order to render a passenger carried in a vehicle to be held to be so carried "by reason of or in pursuance of a contract of employment" it must be shown that the passenger was either employed by the insured or whose employment with some one else had a reasonable or notional association with business which the insured was carrying on. This has no relevance to the present case.

6. For the foregoing reasons there is no escape from the conclusion that the Insurance Company was not required to cover the risk in respect of the deceased under the provisions of Section 95 of the Motor Vehicles Act and as mentioned by the counsel for the Insurance Company the liability of the Insurance Company was only to the extent of Rs. 15000/- on account of the special endorsement to this effect.

7. A point had also been sought to be made by Sh. J.R. Mittal, counsel for the claimants that no specific plea had been raised by the Insurance Company that its liability here was limited to Rs. 15000/-. The argument raised being that though the Insurance Company had denied its liability to pay any amount as compensation, it had not been stated even in the alternative that its liability was limited to Rs. 15000/-. There is clearly no merit in this contention. It is well

settled that the strict rules of pleadings are not applicable in such cases and at any rate it is also pertinent to note that this point was specifically taken before the Tribunal and dealt with by it. This thus, provides no occasion to deny to the Insurance Company the right to take up this point and seek adjudication thereof.

8. For the fore-going reasons it must be held that the liability of the Insurance Company was limited to Rs. 15000/-. It is, however, clarified that this shall not in any manner effect the liability of the other respondents for payment of the amount awarded as compensation.

9. In the result, the appeal is hereby accepted. There, will however, be no order as to costs.