
(1990) 10 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 72 of 1983

New India Assurance Co. Ltd.	Vs	APPELLANT
Shukri alias Lunji and Others		RESPONDENT

Date of Decision : 19-10-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95

Citation : (1991) ACJ 897 : (1991) 2 ShimLC 353

Hon'ble Judges : Davinder Gupta, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; Chhabil Das, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—This appeal has been preferred by the insurance company challenging the award made on July 28, 1982 by Motor Accidents Claims Tribunal, Shimla, allowing the claim petition of the claimant-respondent Nos. 1 to 6 making an award in the sum of Rs. 46,000/- in their favour with costs and interest at the rate of 6 per cent per annum from the date of the award till the date of payment against the driver and owner of the vehicle involved in the accident (respondent Nos. 8 and 9) and also against the insurance company.

2. The relevant facts necessary for decision of this appeal are that one Aklu, the husband of claimant-respondent No. 1 and father of claimant-respondent Nos. 2 to 6, was travelling in truck No. HRE 2131 owned by respondent Ram Chand and driven by respondent Angat Ram. On September 4, 1977, at about 1.40 p.m. the truck met with an accident on Theog-Fagu Road as a result of which Aklu sustained multiple injuries including blunt injury over his head who later on succumbed to his injuries. Claimants-respondents along with the mother and father of deceased preferred a claim petition u/s 110-A of the Motor Vehicles Act, 1939 for the grant of compensation on the ground that the truck was being driven rashly and negligently. The owner and driver of the vehicle were impleaded as respondent Nos. 1 and 2. As the truck was insured, therefore,

appellant was impleaded as respondent No. 3. It was alleged that the deceased at the time of accident was working for Om Parkash, respondent No. 10, as "chaudhari" for loading of his goods, namely, apples and potatoes in the truck who had, in fact, hired the truck.

3. This claim petition was resisted by the appellant as well as respondent Nos. 8, 9 and 10. The owner of the vehicle took up a plea that the deceased was an unauthorised passenger in the vehicle without his knowledge or permission and the driver was not authorised to take passengers. Insurance company also contested on the ground that the deceased was not expected or authorised to travel in the truck. The owner of goods Om Parkash took up a plea that besides his goods, goods of other persons were also being carried in the vehicle. He even denied having engaged the deceased for the purpose of loading and unloading.

4. After the trial, learned Tribunal found that the deceased accompanied by three other labourers was travelling in the truck for the purpose of loading other articles after they had loaded the articles belonging to Om Parkash respondent and at the time of accident, the Tribunal found the deceased to be in the temporary employment of the owner of the vehicle and, as such, made an award against the driver as well as against the owner of the vehicle and also held insurance company to be liable for the payment of the awarded amount.

5. Feeling aggrieved, the insurance company has challenged the award in this court on the ground that in fact the deceased was not travelling in the truck under the orders of the insured or hirer Om Parkash and the terms of the policy did not permit the travelling of deceased in the truck, as such, the Tribunal erred in fastening the liability on the insurance company.

6. I have heard the learned counsel for the parties and have also gone through the record of the case. It has been argued on behalf of the appellant that the Tribunal has not correctly interpreted the terms of policy which do not permit the travelling of persons like the deceased in the truck and under the provisions of the Motor Vehicles Act, the liability of the company is limited under the Workmen's Compensation Act. It was further argued that there was no privity of contract between the labourer deployed by the hirer of the goods vehicle and the insurance company and the case which had been pleaded by the claimants was to the effect that the deceased was deployed as labourer by the owners of the goods, therefore, liability could not have been fastened upon the insurance company.

7. These arguments have been refuted on behalf of the learned counsel for the claimants and it has been argued that "contract of employment" referred to in the Motor Vehicles Act need not necessarily be with the insured alone, even the employees of the owner of the goods carried in a truck are as well entitled to the protection of compulsory insurance under the provisions of the Motor Vehicles Act, as the employees of the insured and, as such, the insurance company is bound to satisfy the award and the same has rightly been made against the

appellant.

8. From the evidence adduced before the Tribunal, one fact stands established that the deceased had been deployed by Om Parkash respondent for loading of 52 bags of potatoes in the truck in question. It is not disputed that Om Parkash was the owner of the goods carried in the vehicle and the truck was loaded at Theog whereafter not only Om Parkash but also deceased along with other persons travelled in the vehicle and more goods were loaded at some distance by the deceased and three persons. These facts are also admitted by Om Parkash when he appeared as RW 1 and this part of statement has not been disputed. PW 1 Devi Singh, who was also one of the persons travelling in the vehicle, during his cross-examination, stated that after the goods had been loaded at Theog, both Om Parkash and the driver of the vehicle asked him, the deceased 1/ labourers to accompany the vehicle and thereafter apples belonging to Om Parkash were loaded. This witness has also stated that Aklu was working as "head chaudhari" for Om Parkash who was the owner of the apples and potatoes loaded in the vehicle. From this evidence, it is clear that the deceased was in the employment of the owner of the goods which had been loaded in the vehicle and in that capacity he was travelling in the vehicle.

9. The question which arises for determination is as to whether in these facts and circumstances, the insurance company can be held liable? Exh. RW 1/A is the policy covering the liability in terms of Section 95 of Motor Vehicles Act, 1939 and it specifically says that the use of the vehicle was:

Use only under a public carrier's permit within the meaning of the Motor Vehicles Act, 1939.

It did not cover the use of the vehicle for the conveyance of passengers for hire or reward. In so far as the liability towards third party, it has been provided that:

Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon, or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises.

10. After considering similar provisions contained in the policy and the provisions of the Act, Full Bench of Punjab and Haryana High Court in Oriental Fire and General Insurance Co. Ltd. Vs. Gurdev Kaur and Others has held that the expression "a contract of employment" has a reference to a contract of carriage of goods whether in relation to the carriage itself or owner of such carriage and after making a reference to Rule 4.60 of the Motor Vehicles Rules which provides that no person shall be carried in a goods vehicle other than a bona fide employee of the owner or the hirer of the vehicle. It was held that the insurance company was liable to satisfy the award in terms of Section 96 (1) of the Act even in the

case of the employee of the owner of the goods being carried in the vehicle. Following this Full Bench decision of Punjab and Haryana High Court, it has been held by Madras High Court in Vanguard Insurance Co. Ltd. v. Chinnamal 1969 ACJ 226 as follows:

Though on a superficial view of the Section, it might appear that the words "contract of employment" found in Section 95 of the Motor Vehicles Act would cover only a contract of employment with the owner of the insured vehicle, there is a preponderance of authority in favour of the other view that it would cover not only such persons but also persons who are on the vehicle in pursuance of a contract of employment with the owner of the goods carried in it. What is necessary is that for sufficient practical or business reasons, the person must be the person on the vehicle in pursuance of a contract of employment. If he is such a person, any injury caused to him would also be covered by the Section.

11. Same view has been expressed by Full Bench of Gujarat High Court in Ambaben v. Usmanbhai Amirmiya Sheikh 1979 ACJ 292. A Division Bench of Andhra Pradesh High Court in Meesala Suryanarayana Vs. Goli Satyavathi and Others has also expressed the similar views. Another Full Bench of Gujarat High Court in Mathura Prasad and Others Vs. Saiyed Khurshed Ahmad and Others, considered the question referred to it as to where the vehicle is, on the date of the contract of insurance, a vehicle not covered by a permit to ply for hire or reward, whether a passenger on payment will get the benefit of the statutory insurance, answered the same as follows:

The liability in respect of the death of or bodily injury to a passenger carried for hire or reward on the insured vehicle when the accident giving rise to the claim occurred, including the liability in respect of the owner or hirer of the insured vehicle or his bona fide employees within the permissible limit, will be covered by the statutory insurance either by virtue of Section 95(1)(b)(i) read with the second clause of the proviso or by reason of Section 95(1)(b)(ii) of the Act. In such a case the insurer will have to pay to the person entitled to the benefit of the award the sum assured, which shall not be less than the sum specified in Section 95 (2), subject, however, to the right of the insurer to disclaim the liability, inter alia, u/s 96(2)(b)(i)(a). The insurer, in order to successfully disclaim his liability on that ground, will have to establish:

- (1) that on the date of the contract of insurance, the insured vehicle was expressly or implicitly not covered by a permit to carry any passenger for hire or reward,
- (2) that there was a specified condition in the policy which excluded the use of the insured vehicle for the carriage of any passenger for hire or reward, and
- (3) that the vehicle was, in fact, used in breach of such specified condition on the occasion giving rise to the claim by reason of the carriage of the passenger therein for hire or reward.

If all these facts are established by the insurer, the benefit of statutory insurance will not be available in respect of such passenger. In other words, the claimant in such a case, be he the passenger himself or his dependant, will not be able to recover from the insurer the amount, if any, awarded in his favour to the extent specified in Section 95 (2) and the insurer will not be liable to satisfy such award.

12. The view of the Full Bench of Punjab and Haryana High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Gurdev Kaur and Others* has been followed by a Division Bench of Madhya Pradesh High Court in *Patharibai Karansingh v. Firm Lalji Shankarlal* 1985 ACJ 526.

13. The view of the authorities on the construction of statutory requirement u/s 95 (1) (b) proviso (ii) of Motor Vehicles Act, 1939 (now Section 147 of Motor Vehicles Act, 1988) favours a larger coverage of risk by insurance of the motor vehicle benefiting all those persons, who by reason of or in pursuance of contract of employment are required to travel on the vehicle. It stands to reason that the risk to body or life of a person who is not a gratuitous passenger but is under an obligation to travel in the insured vehicle by reason of or in pursuance of contract of employment should be covered by insurance. Such a view is in consonance with the recent trend of enlarging the coverage of risk to life by accidents and thereby promoting social justice.

14. The learned Tribunal was wrong in observing that the deceased was in the temporary employment of the owner of the vehicle. In fact, the deceased was in the employment of the hirer of the truck and was travelling on the vehicle by reason of and in pursuance of the contract of employment with Om Parkash and, as such, in view of the aforementioned discussion of law, the appellant is liable to satisfy the award.

15. The amount of compensation as determined by the learned Tribunal has not been seriously challenged. In my view also, the amount awarded is just and reasonable and there is no reason for disturbing the same.

16. In view of the above discussion, the appeal fails and is hereby dismissed. The award made by the Motor Accidents Claims Tribunal is affirmed. However, the amount of compensation as awarded by the M.A.C.T. will be shared by claimant-respondent Nos. 1 to 6 in equal shares and the share of the minors shall be kept in a fixed deposit in a scheduled bank and the minors will be entitled to the same on attaining majority. Parties shall bear their own costs.