

(1995) 05 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Cross Objection No. 58-CII of 1993 and First Appeal From Order No. 226 of 1986

New India Assurance Co. Ltd.

APPELLANT

Vs

Usha Rani and Others

RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Motor Vehicles Act, 1939 — Section 95

Citation : (1995) 2 ACC 564 : (1996) ACJ 489 : (1995) 111 PLR 174

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant; Adarsh Jain, for the Respondent

Final Decision : Dismissed

Judgement

Amarjeet Chaudhary, J.—This judgment of mine will dispose of F.A.O. No. 226 of 1986 filed by the New India Assurance Company Ltd. and Cross Objection No. 58-CII of 1993 filed by the claimants as the same have arisen out of common award of the Motor Accidents claims Tribunal Faridabad. The appeal has been filed by the Insurance Company challenging its liability to pay compensation whereas the cross objections have been filed by the claimants seeking enhancement of the compensation.

2. The challenge to the award is that the deceased, Siri Ram was travelling on the truck as a gratuitous passenger. As such no liability can be fastened on the Insurance Company.

3. Briefly, the facts are that on 19.8.1984 Siri Ram deceased was going to his village Peepalwala with Rattan. Rajender and Suresh in Truck No. HRW 5858, which was being driven by respondent No. 2, Ash Mohammad. They had hired the truck for transporting some cattle from village Jharsateli to their village Peepalwala and they were travelling in the truck. On account of rush and

negligent driving of respondent No. 2, the truck turned turtle and Siri Ram died at the spot while the other persons sustained injuries. The Matter was reported to the Police by one Bharat Singh and F.I.R. No. 198 dated 19.8.1994 was registered against the driver of the offending vehicle.

4. The Motor Accidents Claims Tribunal, Faridabad, on a claim petition u/s 110-A of the Motor Vehicles Act had awarded a sum of Rs. 40,000/- as compensation to the widow of the deceased Siri Ram and her minor children and the liability to pay compensation was fastened on the Insurance Company as the truck in question was insured with it.

5. The Insurance Company in order to absolve of its liability had taken the plea that the driver of the truck had no valid licence and the deceased was travelling in the truck as gratuitous passengers. As such no liability could be fastened on the Insurance Company.

6. However, it is worthwhile to mention that the Insurance Company led no evidence to the effect that the driver of the truck did not possess valid driving licence.

7. After having heard learned counsel for the parties and perusing the paper book, this Court has reached the conclusion that the Insurance company had failed to explain as to how the deceased Siri Ram was gratuitous passenger. There is no evidence on record to suggest that driver of the owner of the truck at any time raised an objection in his travelling in the truck or that he was travelling in the truck in an unauthorised manner.

8. From the paper book, it is also observed that it was not the issue before the Tribunal that the deceased was travelling in the truck in an unauthorised manner. The onus to prove that the deceased was travelling in the truck in an authorised manner was on the Insurance Company but no evidence was led by the Insurance company to this effect whereas the claimants had pleaded that they had hired the truck for transporting cattle.

9. It is well settled principle of law that if a plea is not pressed, it is deemed to have been given up. In this view of the matter, this Court is of the view that the liability to pay compensation on the Insurance company has been rightly fastened. As such, the appeal filed by the Insurance Company is dismissed.

10. During the pendency of appeal, the claimants had filed an application for amendment of claim petition and sought compensation of Rs. 1,40,000/- instead of Rs. 40,000/-. The accident, in this case, had taken place on 19.8.1984. The claim petition was filed on 18.9.1984 which was decided on 3.12.1985. Against the award, the appeal was filed in the year 1986 whereas amendment was sought in the year 1993 for which no explanation with regard to delay has been given. In this view of the matter, application for amendment as well as cross objections are dismissed. No costs.