

(2006) 03 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1433 of 2006

New India Assurance Company Limited

APPELLANT

Vs

Mohinder Singh and Others

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 139(2), 173

Citation : (2006) 3 ACC 328 : (2007) ACJ 936 : (2006) 144 PLR 342(1) : (2006) 4 RCR(Civil) 805

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Ashwani Talwar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The New India Assurance Company has approached this Court by filing the instant appeal u/s 173 of the Motor Vehicles Act 1988 (for brevity "the Act") challenging award dated 7.1.2006 passed by the Motor Accident Claims Tribunal Panipat (for brevity "the Tribunal"). It has been categorically found by the Tribunal that the accident was caused on 9.7.2004 due to rash and negligent driving of the offending vehicle bearing Registration No.HR-06-J-5564. The vehicle was being driven by one Nikhil respondent No. 2. It resulted into grave multiple injuries to the claimant-respondent No. 1 Mohinder Singh. A total sum of Rs. 195011/- has been awarded under various heads like pain and suffering expenses on treatment expenses on the follow up treatment expenses on transportation loss of salary and disability.

2. The principal controversy centres around the fact that Nikhil the driver of the vehicle at the time of accident was not holding a valid driving licence. However it could not be proved that the owner of the vehicle Sham Lal respondent No. 3 had permitted Nikhil to drive the vehicle as the burden to prove the aforementioned fact was on the insurer. Placing reliance on a judgment of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, the

Tribunal has held that it was the duty of the insurer to prove that the insured was guilty of negligence and failed to exercise reasonable care in accordance with the policy of insurance. However the Tribunal found that the appellant-Insurance Company has failed to discharge that onus as it could not prove that Sham Lal owner-respondent No. 3 had allowed the use of the vehicle by Nikhil driver-respondent No. 2 and accordingly answering the issue by observing as under:

...The burden is on the insurer to establish breach of policy by leading cogent evidence. In the case in hand it is not proved that insured Sham Lal allowed use of his vehicle by respondent No. 1 intentionally and which met with an accident. It is his specific version that he allowed the use of the offending vehicle by his employee Pawan @ Pappu RW 2 and who was holding a valid and effective driving licence. But without his consent he allowed the use of that vehicle by respondent No. 1. So in such a situation the exclusion clause does not exonerate the insurer as the insured had done every thing in his power to keep honour and fulfill promise and is not guilty of deliberate breach. So in such a situation the exclusion clause does not exonerate the insurer as the insured had done every thing in his power to keep honour and fulfill promise and is not guilty of deliberate breach. So in such a situation it cannot be said that there is any breach of terms and conditions of the policy of insurance Ex.R.2. So the Insurance Company cannot be absolved from its liability to indemnify the insured or the claimant being a third party....

3. We have heard learned Counsel for the appellant-Insurance Company and are of the view that the award passed by the Tribunal does not suffer from any legal infirmity. The factum of accident injury of the deceased and various amounts awarded are the facts which have been adequately proved before the Tribunal. The only controversy which has been raised is that Nikhil driver-respondent No. 2 did not have any driving licence. However it has been proved that Sham Lal owner-respondent No. 3 did not commit any breach of the terms and conditions of Insurance Policy because he had permitted Pawan @ Pappu to drive the vehicle who in turn have allowed the same to be driven by Nikhil driver-respondent No. 2. In other words no fault can be found that the act and conduct of owner-respondent No. 3 as he took all care while handing over the vehicle to Pawan @ Pappu. Therefore we are of the view that no interference of this Court would be warranted because there is no violation of the terms of the terms and conditions or any proof of negligence on part of the owner-respondent No. 3 within four corners of Section 139(2) of the Act.

4. For the reasons aforementioned this appeal fails and the same is dismissed.