
(2010) 02 P&H CK 0212
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 963 of 1997

New India Assurance Company Ltd.

APPELLANT

Vs

Balwant Singh and Others

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(I)(b)

Citation : (2010) 2 AICJ 35 : (2010) 5 RCR(Civil) 807

Hon'ble Judges : Vinod K.Sharma, J

Judgement

Vinod K.Sharma, J.—This appeal by the Insurance Company, is directed against the award dated 19.12.1996, passed by the learned Motor Accident Claims Tribunal, Gurdaspur, vide which the application moved by the claimants under Section 166 of the Motor Vehicles Act for grant of compensation, on account of death of Sulakhan Singh alias Bawa Singh S/o Balwant Singh, stands allowed.

2 The claimantrespondents filed a claim petition under Section 166 of the Motor Vehicles Act for grant of compensation of Rs. 10,00,000/ (Rupees ten lac only) on account of death of Sulakhan Singh alias Bawa Singh S/o Balwant Singh. The deceased was 23 years of age, and was serving as cleaner of truck No. PIQ5522, which belonged to respondents No. 2 to 4. His monthly income was claimed to be Rs. 3,000/ (Rupees three thousand only).

3 The claimants Balwant Singh and Manjit Kaur are the fathe and mother of the deceased, whereas Lakhwinder Kaur is his unmarried sister, who were totally dependent on the deceased for their livelihood.

4 The case pleaded was, that on 6.2.1994, at about 5.30 p.m., deceased started his journey as a cleaner along with respondent No. 1 from Gurdaspur to Delhi via DhariwalBatala on truck No. PIQ5522. When the truck was at a distance of one kilometer from Dhariwal, and was near village Trija Nazir, maruti van No. PAG8745, which was being driven by respondent No. 5 rashly and negligently, came from the opposite direction from Dhariwal Singh. The truck was also being driven rashly and negligently. Both the vehicles collided with each other. Due to

the rash and negligent driving of the vehicle, the truck turned turtle, and the deceased suffered multiple grievous injuries. The deceased was shifted to the Civil Hospital, Gurdaspur, where he died after 4/5 hours. The claimants spent a sum of Rs. 4,000/ (Rupees four thousand only) for his treatment there. FIR regarding this accident was also registered.

5 As already observed, the compensation along with interest @ 18% per annum was claimed from the respondents.

6 Respondent No. 1 filed written statement, admitting the accident, but took a plea that the accident took place due to the rash and negligent driving of the maruti van by respondent No. 5. The compensation claimed was said to be on the higher side. Other averments made in the claim petition were admitted.

7 Respondents No. 2 to 4 also filed reply by stating therein, that the deceased was earning about Rs. 3,200/ (Rupees three thousand and two hundred only) per month. However, they denied the factum of accident for want of knowledge. Other averments were admitted.

8 Similarly, respondents No. 5 and 6 denied the averments made in the claim petition, but admitted the time, date and place of occurrence, and also the police station in whose jurisdiction the accident occurred. According to respondents No.5 and 6, the maruti van was insured with the United India Insurance Company, Branch Gurdaspur.

9 Appellant/respondent No. 7 filed separate written statement denying, that the deceased was working as cleaner with truck No. PIQ5522, or that he was earning Rs. 3,000/ (Rupees three thousand only) per month. It was admitted that the truck was insured with it from 3.3.1993 to 2.3.1994. It was denied that the truck was being driven rashly and negligently. It was pleaded, that the driver of the truck did not have a valid driving licence, therefore, the Insurance Company was not liable to pay any compensation. It was also pleaded, that vehicle did not have a route permit and fitness certificate. The other averments were also denied.

10 Respondent No. 8 denied the involvement of maruti van, and took a plea, that driver of van was not having a valid driving licence and fitness certificate.

11 Claim petition was also opposed by respondent No. 9, by claiming that he was neither the owner of maruti van nor had any concern with it. It was pleaded that maruti van was sold to respondent No. 6.

12 On the pleadings of the parties, the learned Tribunal framed the following issues :

" 1. Whether Sulakhan Singh alias Bawa Singh died on account of rash and negligent driving of Maruti Van No. PAG8745 by respondent No. and truckNo. PIQ5522 by respondent No. 1 ? OPA

2. To what amount of compensation, the applicants are entitled and if so to what

amount and from whom ? OPA

3. Whether the application is not maintainable ? OPR.

4. Relief.

13 On appreciation of evidence, the learned Tribunal on issue No. 1 held, that the accident took place on account of rash and negligent driving of truck No. PIQ5522 by respondent No. 1, which resulted in the death of Sulakhan Singh alias Bawa Singh and that the maruti van was not at fault.

14 On issue No. 2, the learned Tribunal held, that the claimants being legal representatives of the deceased and dependent on him, were entitled to compensation to the tune of Rs. 3,84,000/ (Rupees three lac eighty four thousand only).

15 Issue No. 3 was decided against the appellant, and as a result thereof, the compensation of Rs. 3,84,000/ (Rupees three lac eighty four thousand only) was granted in favour of the claimants against respondents No. 1 to 4 and 7. The liability was held to be joint and several. The appellant was directed to pay the amount along with interest @12% per annum. Lakhwinder Kaur was held entitled to Rs. 84,000/ (Rupees eighty four thousand only) along with proportionate amount of interest and the remaining claimants were held entitled to the remaining amount in equal shares.

16 Mr. L.M. Suri, learned senior counsel, appearing on behalf of the appellant, challenged the liability of the appellant to pay the assessed amount, on the ground that as the deceased was employed as cleaner, therefore, the liability on the Insurance Company, could not be fastened beyond the liability, under the Workmen's Compensation Act. The liability of the Insurance Company under the Act, was only to the extent of compensation, payable under the Workmen's Compensation Act, as the deceased could not be said to be a third party, as held by the learned Tribunal.

17 The other contention of the learned senior counsel for the appellant was, that the driving licence of the driver of offending vehicle was bogus and no liability, therefore, could be fixed on the Insurance Company.

18 In support of the second point, the learned senior counsel, referred to the statement of RW1 Milap Chand, who had got exhibited Ex. RI i.e. report made by Devinder Singh for the District Transport Officer, Gurdaspur, to contend that licence No. 7248 was not issued by District Transport Officer, Gurdaspur, to any person.

19 The contention of the learned senior counsel was, that RW1 had, clearly admitted the interpolation with regard to entry qua issuance of licence to the driver, therefore, the learned Tribunal committed an error in accepting the licence to be valid.

20 The learned Tribunal did not accept this plea for the reason that report Ex. RI,

on which reliance was placed, was made on application of Sh. RPS Sodhi, but no person was examined to prove the said report.

21 Whereas Milap Chand as RW1 admitted that there was no person posted as Clerk in the office of District Transport Officer, Gurdaspur, with the name of Devinder Singh. The learned Tribunal, held that as Devinder Singh was not employed as Clerk in the office of District Transport Officer, Gurdaspur, no reliance could be placed on Ex. RI. The learned Tribunal further held, that the driving licence Ex. RI was valid from 27.12.1991 to 26.12.1994. In the renewal register, the entry was readable as Lakhwinder Singh S/o Chain Singh, which was subsequently scored off without any authority, as the scoring off the was not initialed by any officer.

22 The contention raised by the learned senior counsel for the appellant, therefore, cannot be accepted, with regard to validity of the licence and the findings recorded by the learned Tribunal in this regard do not call for any interference.

23 On the first point, the learned senior counsel contended, that the learned Tribunal failed to take note of the fact that under Section 147 of the Motor Vehicles Act, the liability of the appellant was limited to the one under the Workmen's Compensation Act, 1923, therefore, the liability qua the total compensation could not be fastened on the appellant.

24 The relevant extract of Section 147, on which the contention of the appellant rests, reads as under :

"Section 147 : Requirement of policies and limits of liability. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which (a) xxx xxx xxx xxx xxx

(b) insures the person or classes of persons specified in the policy to the extent specified in Subsection (2) (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place; (ii) against the death of or bodily injury to any passenger of a public services vehicle caused by or arising out of the use of the vehicle in a public place : Provided that a policy shall not be required (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee (a) engaged in driving the vehicle, r

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

25 The contention of the learned senior counsel, therefore, was that in view of proviso to Section 147 (i)(c), the liability of the Insurance Company was limited to one under the Workmen's Compensation Act, 1923.

26 The reference, to Section 147 (i)(b) read with Clause (c) shows the liability of the Insurance Company as limited to one under the Workmen's Compensation Act.

27 The learned counsel, appearing on behalf of respondents No. 1 to 3, however, contended, that this plea was not taken before the learned Tribunal, therefore, the appellant cannot be allowed to take this point for the first time in this appeal.

28 It was also the contention of the learned counsel for respondents No. 1 to 3, that the policy taken out by the owner covered the liability qua the cleaner also.

29 On consideration, I find force in the contentions raised by the learned senior counsel for the appellant. Section 147 of the Motor Vehicles Act has been interpreted by the Hon'ble Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani*, 2003(1) RCR (Civil) 671, as under :

"15. Section 147 of 1988 Act, inter alia, prescribed compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle".

Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "good carriage".

30 The provisions of Section 147 came for consideration before the Hon'ble Supreme Court again in *Ramashray Singh v. New India Assurance Co. Ltd. and Ors.*, 2003(4) RCR(Civil) 1: AIR 2003 SC 2877, wherein the Hon'ble Supreme Court interpreted proviso to Section 147 as under :

"10. The appellant's first submission was that Shashi Bhushan Singh was a passenger. The appellant's submission that the phrases "any person" and "any passenger" in Clauses (i) and (ii) of Subsection (b) to Section 147(1) are of wide amplitude, is correct. See : *New India Assurance Company v. Satpal Singh and Ors.* AIR 2000 SC 23. However, the proviso to subsection craves out an exception in respect of one class of persons and passengers, namely, employees of the insured, in other words, if the "person" or "passenger" is an employee, then the insurer is required under the statute to cover only certain employees. As stated earlier, this would still allow the insured to enter into an agreement to cover other employees, but under the proviso to Section 147(1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured arises under the Workmen's Compensation Act, 1923 and second: if the employee is engaged in driving the vehicle and if it is a public

service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of "any person" or "passenger". If this were permissible, then there would be a need to make special provisions for employees of the insured. The mere mention of the work "cleaner" while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a passenger."

31 The cleaner is under Clause (c), to the proviso to Section 147 (b) and the liability qua the Insurance Company would be limited to one under the Workmen's Compensation Act.

32 This appeal is accordingly accepted. The liability of the Insurance Company is fixed as per the provisions of the Workmen's Compensation Act. The balance amount of compensation shall be recoverable from the owner and the driver of the vehicle under the Law of Torts.

33 The learned Executing Court may determine the liability of the Insurance Company while executing the award, and claimants be permitted to execute the balance decretal amount against owner/driver. Appeal disposed off. Appeal disposed of.