
(2010) 02 P&H CK 0271
In the Punjab And Haryana At Chandigarh

New India Assurance Company Ltd.

APPELLANT

Vs

Jasbir Kaur and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 1, 147, 163A

Citation : (2010) 02 P&H CK 0271

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This appeal by the Insurance Company is directed against the award dated 14.10.2009 passed by the learned Motor Accident Claims Tribunal, Gurdaspur (for short the Tribunal) vide which petition filed u/s 163-A of the of the Motor Vehicles Act, 1988 (for short the Act), was allowed.

2. The case set up by the claimant/respondents was that on 15.11.2005 deceased Joga Singh was coming from Rajasthan State to Punjab on a truck bearing No.PB-06A-2645 being driven by respondent No. 1 after loading tomatoes on the truck. Joga Singh i.e. the deceased was also in the vehicle as he was employed as helper on the vehicle by respondent No. 1. When the vehicle reached near Jodhpur, suddenly plates of front axle were broken and the vehicle turned turtle, wherein Joga Singh received multiple injuries on his body and his backbone was badly damaged. Joga Singh was admitted in M.G. Hospital, Jodhpur and thereafter shifted to Nijjar Hospital, Amritsar for medical treatment. Hence the compensation was claimed on the plea that Joga Singh was totally unable to do any work. Subsequently, he died.

3. On notice respondents No. 1 and 2 filed a joint written statement denying entire version of the claimants and prayed that the claim petition be dismissed with costs.

4. Appellant Insurance Company, filed written statement claiming that the

petition was not maintainable and that the respondent No. 1 driver was not holding a valid driving licence. Averments made on merits were also denied.

5. On the pleadings of the parties learned Tribunal framed the following issues:

1. Whether injured Joga Singh received injuries due to use of offending truck bearing No.PB-06A-2645, driven by respondent No. 1? OPA

2. If issue No. 1 is proved, whether the claimant is entitled to compensation. If so, from whom and of what amount? OPA

3. Whether the driver of the offending truck No.PB-06A 2645 was not holding a valid and effective driving license at the time of accident and its effect? OPR-3

4. Whether the claim petition is not maintainable? OPR-3

5. Relief.

6. On issue No. 1, learned Tribunal held that Joga Singh received injuries due to use of offending truck bearing No.PB-06A-2645 driven by respondent No. 1.

7. On issue No. 2, learned Tribunal held that the claimants were entitled to compensation of Rs. 3,62,000/- (Rupees three lac sixty two thousand only) along with interest at the rate of 9 per cent per annum. Out of the awarded amount Rs. 80,000/- (Rupees eighty thousand only) each was given to minor claimants No. 2 and 3, and remaining to respondent No. 1. Respondents were held jointly and severally liable to pay the amount.

8. On issue No. 3 which was framed due to objection raised by the appellant finding was recorded as under:

14. Onus to prove these issues was upon respondent No. 3 Insurance Company and respondent No. 3 has not led any evidence on this issue. Counsel for respondents No. 1 and 2 has placed on the file photo copy of the driving licence of respondent No. 1, which is mark "R" From driving license mark "R" it is clear that respondent No. 1 was issued driving license by DTO, Gurdaspur and this license was valid up to 25.2.2008 and respondent No. 1 was entitled to drive light transport vehicle and heavy transport vehicle. So it is clear that on the date of accident, respondent No. 1 was having valid and effective driving license. So this issue is decided in favour of defendants No. 1 and 2 and against respondent No. 3.

9. Mr. L.M. Suri, learned senior counsel appearing on behalf of the appellant has challenged the impugned award on the plea that as per Second Schedule attached to the Act, on account of death no compensation towards the expenses incurred for treatment could be granted. The contention of the learned Counsel for the appellant was that as per Schedule the medical expenses in case of injuries and disabilities can be granted subject to maximum of Rs. 15000/-, (Rupees fifteen thousand only), whereas the claimants have been awarded Rs. 40,000/- (Rupees forty thousand only) on account of expenses incurred.

10. This plea of the learned senior counsel for the appellant cannot be accepted. The claim of medical expenses was not challenged before the learned Tribunal by the appellant. Even otherwise, Second Schedule attached to the Act is merely for guidance and does not bar the grant of higher compensation in case of actual expenses incurred and proved.

11. The contention of the learned senior counsel for the appellant that funeral expenses were also liable to be restricted to Rs. 5000/- (Rupees five thousand only), again cannot be sustained as the courts in the facts and circumstances can always grant higher expenses. This contention of the learned senior counsel for the appellant, therefore, deserves to be noticed to be rejected.

12. Learned senior counsel for the appellant thereafter contended that the Insurance Company could not be held liable for payment, as the deceased was not covered under proviso to Sub-section 1(b) of Section 147 of the Act, as he was neither the driver nor the conductor. This plea cannot be accepted as under proviso of Sub-section 1(b) and 1(C) deceased would be covered.

13. Even otherwise, once it is not disputed that the insurance company is liable to indemnify the insurer then in view of the Full Bench Judgment of this Court in the case of National Insurance Co. Ltd. v. Smt. Santro Devi and Ors. (1996) 3 PLR 667, it is the duty of the Insurance company to indemnify the insured. This plea of the learned senior counsel for the appellant also cannot be accepted.

14. Consequently, finding no merit in this appeal it is ordered to be dismissed in limine.