
(1987) 08 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 494 of 1983

New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Chandrawati and Others

RESPONDENT

Date of Decision : 03-08-1987

Acts Referred:

Citation : (1989) 65 CompCas 489

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : G.S. Chawla, for the Appellant; Raj Mohan Singh, for S.S. Rathor, for respondents Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This appeal, filed on behalf of the New India Assurance Company, is directed against the award of the Motor Accidents Claims Tribunal, Karnal, dated April 16, 1983, whereby a sum of Rs. 76,800 was allowed as compensation to the heirs of the deceased, Jai Narain, out of which the insurance company was held liable to the extent of Rs. 50,000 only.

2. The accident took place on June 12, 1982. The deceased, Jai Narain, was driving a three-wheeler while Faqir Chand was driving the offending tractor-trolley bearing No. 4501. The claim petition was filed by the widow of the deceased and his three minor children. The Tribunal ultimately found that the accident in question had taken place due to rash and negligent driving of the driver of the tractor-trolley. The annual dependency allowance of the deceased was determined to be Rs. 4,800 and by applying a multiplier of sixteen, a sum of Rs. 76,800 was awarded as compensation. As observed earlier, out of this amount, the insurance company was held liable to pay to the extent of Rs. 50,000 only.

3. At the time of motion hearing, reliance was placed on Smt. Chhanno Devi v. Het Ram [1983] PLR 584 : [1986] 59 Comp Cas 941, to contend that since the

offending tractor was being misused for carrying the marriage party and it being in violation of the terms of the policy, the insurance company was not liable for payment of any compensation. The liability, if any, was that of the owner. However, later, vide order dated March 1, 1984, the application for stay was declined on the ground that Smt. Chhanno Devi's case [1983] PLR 584 : [1986] 59 Comp Cas 941, was prima facie not applicable to the present case because, therein, the occupant of the truck had died in the accident whereas in the present case the claim was made by a third party, i.e., the driver of the three-wheeler against which the truck had hit.

4. Learned counsel for the insurance company/appellant reiterated that since the tractor was being used for carrying the marriage party, the insurance company could not be held liable for any compensation as it was in violation of the terms of the policy. I do not find any force in this contention. As observed earlier, the claim is being made by the heirs of the deceased driver of the three-wheeler. He being a third party, the liability of the insurance company is very much there. Moreover, it was held by the Supreme Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* [1987] 62 Comp Cas 138 : [1987] 1 PLR 665, that it will be for the insurance company to establish that the insured is guilty of any infringement or violation. If the insured is not at all at fault and has not done anything he should not have done, the insurer cannot escape from the allegation to indemnify the insured. In the present case; the insurance company has failed to prove by any cogent evidence that there was any violation of the terms of the policy. In any case, the deceased being a third party, his heirs are entitled to the amount of compensation from the insurance company to the extent it was liable under the policy. Consequently, the appeal fails and is dismissed with costs.