
(1988) 11 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 438 of 1984

New India Insurance Co. Ltd.

APPELLANT

Vs

Maj. Hans Raj Saini and Others

RESPONDENT

Date of Decision : 04-11-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1939 — Section 110B, 95, 96

Citation : (1989) 2 ACC 121 : (1989) ACJ 740 : AIR 1989 P&H 283 : (1990) 67 CompCas 369

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : L.M. Suri and Ravinder Arora, for the Appellant; Munishwar Puri and Baldev Mahajan, for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Motor Accidents Claims Tribunal, Rupnagar, on Jan. 3, 1984, awarded compensation of Rs. 3,41,400/- to Major Hans Raj Saini on account of the injuries suffered by him in an accident which took place on Oct. 20, 1982, at about 3.45 p.m. on Ropar-Nangal road in the area of village Ghanauli. Major Hans Raj was travelling by bus No. PUR 8501. Truck No. HRA 2575 came from the opposite direction and dashed against the bus resulting in causing injuries to the claimant. Major Hans Raj. A claim petition was filed by Major Hans Raj claiming Rs. 4,00,000/- as compensation against owner of the truck; owner of the bus, driver of the bus and the insurance company M/s. New India Assurance Company Ltd. who happened to be insurer of both the vehicles involved in (he accident. The insurance company aforesaid filed this appeal which was admitted only against owner of the truck. It was dismissed regarding other respondents.

2. Learned counsel for the respondent has challenged maintainability of the appeal filed by the insurance company on the ground that the insurance company cannot dispute the questions of negligence and quantum of

compensation. In support of this contention, reliance has been placed on some of the decisions. In Kantilal and Bros. and Another Vs. Ramarani Debi and Others, , the Calcutta High Court held that appeal by owner as well as the insurer against the award imposing no liability on the owner but insurance company was directed to pay the amount was not maintainable which was filed by both the owner as well as the insurer. It was observed that since owner of the car was not made liable to pay the amount, he could not file the appeal as he was not the person aggrieved. With respect to the appeal of the insurance company it was observed that the appeal did not contain any ground u/s 96(2) of the Motor Vehicles Act and thus the entire appeal was not maintainable. On the similar line is the decision of Jammu and Kashmir High Court in United Fire and General Insurance Co. Ltd. Vs. Lakshmi Shori Ganjoo and Others, , holding that the insurer was not entitled to resist the award, where the insured had been found liable, on the ground not enumerated u/s 96(2) of the Act, except in cases where the terms of the policy provided that the insurer had the right to defend the action in the name of the insured and if the claimant had colluded with the insured, this was to be done after getting permission from the Tribunal. In New India Assurance Co. Ltd. v. Saira 1986 Ace CJ 724 , the Allahabad High Court also took the view that the insurer could not challenge the finding of rash and negligent driving , and quantum of compensation awarded which was within the statutory limit and on these matters appeal was not maintainable, in United India Insurance Co. Ltd. Vs. Ismail and Others, , similar view was taken as noticed above. As to what are the grounds available of the insurance company in such like cases, the matter was examined by the Supreme Court in. British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . While making reference to the provision of Section 96(2) of the Motor Vehicles Act it was observed that the ground of defence was specified therein which the insurer could take Such grounds could not be added While making reference to Sub-section (6) of Section 96 it was observed that when Sub-section (6) talks of avoiding liability in the manner provided in Sub-section (2) it necessarily refers to those defences. It was further observed that it could not be said that in enacting Sub-section (2), the legislature was contemplating only those defences which were based on the conditions of the policy.

3. On going through the judgments referred to above and the provisions of Section 95 and 96 of the Motor Vehicles Act, it is clear that the liability of the insurance company is determined by the provisions of the Act as well as terms and conditions of the policy of insurance and the insurance company cannot dispute the questions of negligence or the quantum of compensation. That being the position it is to be determined as to whether in the present appeal, the insurance company, the appellant, is disputing the negligence or the quantum of compensation. In view of the facts hereinafter noticed, it is clear that the appellant is neither challenging the question of negligence nor the quantum of compensation payable to the claimant. What the appellant wants is that its statutory liability or liability under the insurance policy be determined.

4. In the impugned order, the Tribunal held that driver of truck No. HRA 2575 was negligent in causing the accident to the extent of 80% and that of bus No. PUR 8501 was negligent to the extent of 20%. What the appellant wants is that its liability should also be so determined in that proportion. Taking into consideration the provisions of Section 95 and 96 of the Motor Vehicles Act, the Tribunal in the concluding paragraph while awarding the compensation of Rs. 3,41,400/- observed that owner of the truck, owner of the bus and driver of the bus were liable jointly and severally but as between owner of the truck on one side and owner and driver of the bus on the other side, the ratio would be 20% of 80% and further mobility of owner of the truck being covered by the policy of the insurance issued by the insurance company who was impleaded as respondent 4 in the petition the said amount would be paid by the insurance company and the said amount would further be reduced by Rs. 15,000/- which was paid by respondent 5 also the said insurance company as insurer of the bus. During arguments, the appellant's insurance company challenges this part of the award of the Tribunal as briefly noticed above. This would show that the appellant is not at all challenging either the question, of negligence or the quantum of compensation payable to the claimant. Thus the present appeal is held to be maintainable.

5. Learned counsel for the appellant has pointed out an error in the concluding para of the Tribunal and prayed that it may be corrected. The Tribunal while deciding issue No. 1 as already noticed above held that the accident took place due to rash and negligent driving of the truck to the extent of 80% and that of bus 20%. However, it appears that by typographical error while awarding compensation of Rs. 3,41,400/- for which respondents 1 to 3 before the Tribunal (owner of the truck, owner of the bus and driver of the bus respectively) were made liable jointly and severally and as between owner of the truck on one side and owner and driver of the bus on the other side it was stated that it will be in the ratio of 20 : 80 whereas it should have been 80 : 20. Learned counsel for the respondent has argued that if this is done, it would amount to reversing the order of the Tribunal in the matter of negligence as well as quantum and the second objection is that since the present appeal was dismissed qua the other respondents, the award of the Tribunal had become final as against them and the award cannot be modified. There is no merit in these contentions. Firstly, the award is to be read as a whole and not the concluding paragraph in isolation. On recording a firm finding regarding the question of negligence of drivers of the two vehicles involved in the accident, the concluding paragraph was required to be in accordance with the finding as above. Secondly, it is only a typographical error which can be corrected even by the Tribunal himself and on appeal by the Appellate Court. As far as the last contention of the learned counsel for the appellant in this respect is concerned that the award has become final qua the respondents against whom the appeal was dismissed, it may be noticed that by making correction in the award as above, no adverse order against such of the respondents is going to be passed. By mistake their liability was shown to be

80% which in fact ought to have been 20%. Furthermore, Order 41, Rule 33 of C.P.C. empowers the appellate Court to pass any decree and make any order which ought to have been passed or made and to pass or _make such further decree or order as the case may require. This power can be exercised notwithstanding that the appeal is as to the part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objections. The contention of the learned counsel for the respondent in this respect is, therefore, repelled and appropriate order as required in the facts and circumstances of the present case incorporating correction of the award would be passed.

6. It has been argued on behalf of the respondents that in case of composite negligence, as is the present one, the claimant is at liberty to recover the amount of compensation awarded from any of the joint tortfeasors and it is not necessary to apportion the liabilities of the joint tortfeasors including the insurance company. Learned counsel for the respondent has referred to the following decisions in support of his contention :

(i) Parsani Devi v. State of Haryana 1973 Ace CJ 531 (Punj and Har); (ii) Sushila Rani Sharma v. Som Nath 1974 ACJ 505 (Punj and Har); (iii) United India Fire and General Insurance Co. Ltd. v. Mrs. Sayar Kanwar 1976 Ace CJ 426 : AIR 1976 Raj 173 (iv) Hira Devi v. Bhaba Kanti Das 1977 Ace CJ 293 : AIR 1977 Gau 31 (v) Golak Chandra Das v. Kousalya Nayak 1978 Ace CJ 48 (Orissa); and (vi) Sampat Kunwar Bai v. Gurmeet Singh 1988 Ace CJ 342 (Raj).

7. It is not necessary to deal with the aforesaid judgments in detail as the matter has been decided by Division Bench of this Court in F.A.O. No. 436 of 1986 : Narinderpal Singh Vs. Punjab State and Others, . The matter was referred to the Division Bench as correctness of the decision of M. M. Punchhi, J., in Mukhtiar Singh v. Smt. Krishna Gulati 1986(1) 89 PLR 600 was doubted which was a case of contributory negligence, wherein observations were made in para 6 of the judgment as under :

"When it is a case of composite negligence and one tortfeasor has been made to pay the compensation, he can rateably ask for compensation from the other tortfeasor, but then again the Court is required to apportion the negligence inter as to reimburse the tortfeasor who compensated the claimants.

8. After referring to the provisions of Section 110B of the Motor Vehicles Act it was observed as under by the Division Bench (at p. 86 of AIR) :

"Having considered the provisions of Section 110B of the Act, quoted above, view expressed in Halsbury's Laws of England, view expressed in Corpus Juris Secum dum and the decided cases, we find it clear that it is the duty of the Tribunal to apportion the compensation even in the case of joint and several liability, without which it would not be a complete determination by it. Moreover, when exclusive jurisdiction has been given to the Tribunal, it would not be proper to say that inter se between the two joint tortfeasors there should be fresh

litigation before a Civil Court in separate proceedings and that Court should decide the dispute. It is another cardinal rule of jurisprudence that multiplicity of proceedings on the same matter should be avoided and unless it is expressly provided or is the necessary intendment, the interpretation should be such that a Tribunal of exclusive jurisdiction should finally decide the dispute on all matters between them and should not leave any part to be gone into in a separate suit before another Court of law. As has been noticed above, it is the expressed provision in Section 110B of the Act that inter se dispute between the joint tortfeasors has also to be decided, whether all of them are liable to what extent, and if not then which of them and for how much amount.

9. The appellant-insurance company produced copies of the insurance policies of both the vehicles. Exhibit R-1 is the certificate of insurance relating to the truck in the name of M/s. Bhagwati Stone Crushers. The insurance policy is Exhibit R-2. Copy of the insurance policy of the bus is Exhibit R-3 and is in favour of the Ambala Bus Syndicate (P) Ltd. The insurance policy, Exhibit R-2, gives the limits of liability and reads as under :

"Limit of the amount of Company's liability u/s 11-1(i) in respect of any one accident. Limit of the amount of the Company's liability u/s 11-1(ii) in respect of any one claim or series of claims arising out of the event.: Rs. 1,50,000/-."

Exhibit R-3, which is insurance policy of the bus, gives the limit of liability as under :

"Limit of the amount of Company's liability u/s 11-1(i) in respect of any one accident. (Such Amount as is necessary to meet requirements under Motor Vehicles Act 1939)

Limit of the amount of the Company's liability u/s 11-1(ii) in respect of any one claim or series of claims arising out of one event Rs. 50,000/-.

10. Since the negligence of the driver of the truck involved in the accident was to the tune of Rs. 80,000/-, liability of the owner of the truck, M/s. Bhagwati Stone Crushers, respondent, would be to the tune of Rs. 2,72,800/- and since the negligence of the driver of the bus was held to the extent of 20%, the liability of M/s. Ambala Bus Syndicate, owner, and Bhajan Singh, driver of the Bus, would be to the tune of Rs. 68,200/- Since it is a case of composite negligence, the claimant can recover the entire amount from either of these persons i.e. owner of the truck, owner of the bus and driver of the bus. Their liability is joint and several. As far as the appellant-insurance company is concerned, with respect to the truck in dispute, the limit of the liability of the appellant is to the tune of Rs. 1,50,000/-. Thus out of the amount of compensation of Rs. 2,72,800/-, which is liability of M/s. Bhagwati Stone Crushers, owner of the truck, the appellant-insurance company is liable to the extent of Rs. 1,50,000/- and out of the amount of compensation of Rs. 68,200/-, which is to the extent of 20% liability of the owner and driver of the bus, the limit of the liability of the: insurance company, the appellant, is to the extent of Rs. 15,000/- u/s 95(2)(b)(ii) of the

Act. It is further directed that if any of the persons liable to make payment of the amount of compensation had made payment to the claimant in excess of the amount as determined above on account of composite liability, he can recover the said excess amount from the person on whose account the amount had been paid. On the amount of compensation, the claimant would get interest at the rate of 10% per annum from the date of institution of the claim petition i.e. 18-4-1983 till realisation as allowed by the Tribunal. This appeal is accepted with no order as to costs, and the award of the Tribunal is modified as above.