
(1986) 07 P&H CK 0093
In the Punjab And Haryana At Chandigarh

Nishat and Malwa Bus Private Limited and Another	APPELLANT
Vs	
Inder Kaur and Others	RESPONDENT

Date of Decision : 14-07-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1987) 1 ACC 74 : (1987) ACJ 1001 : (1986) 90 PLR 638

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

S.S. Sodhi, J.—The challenge in appeal here is to the liability of the Insurance Company for payment of compensation to the claimants in excess of Rs. 15,000/- in respect of each bus passenger.

2. On February 26, 1983 at about 5.30 p.m. the bus PBA-6307, which was carrying a marriage party from Jandiala Guru to Rewari suddenly went off the road and hit into a tree. As a result of this accident, one passenger, Santokh Singh, was killed while several others were injured. The claimant Ayodhia Nath being one of them. It was the finding of the Tribunal that this accident had been caused entirely due to the rash and negligent driving of the bus driver. A sum of Rs. 57,600/- was awarded as compensation to the widow and sons of Santokh Singh deceased while Ayudhia Nath was awarded Rs. 62,000/- for the injuries suffered by him. Liability of the United India Insurance Company with which the bus was insured, was held to be limited "to the extent prescribed under the statute" meaning thereby the Motor Vehicles Act, 1939. Herein lies the challenge. The plea of the owners of the bus being that the Insurance Company was liable for the entire amount awarded.

3. According to Mr. L.M. Suri, counsel for the respondent-Insurance Company, the liability of the Insurance Company, in the present case must be held to be limited to Rs. 15,000/- in respect of each bus passenger, keeping in view the provisions of Section 95 of the Motor Vehicles Act, 1939.

4. In dealing with the matter, relating to the extent of the liability of the Insurance Company, it must at the very out-set be noted that it is for the first time in appeal here that such a point has been raised. No such plea had been raised in the written statement filed by the Insurance Company nor indeed was any such contention put-forth before the Tribunal.

5. Further, a reading of the provisions of Section 95 of the Motor Vehicles Act, 1939 shows that they merely prescribed the minimum but not the maximum liability of the Insurance Company. In other words, the insurance cover cannot be less than the sum mentioned therein, but it does not preclude a higher risk being covered by the Insurance Company. This being so, it has been the consistent view of this court that the liability of the Insurance Company must be held to extent to the entire amount awarded unless a specific plea is raised by the Insurance Company that its liability is limited and the policy of Insurance is also placed on record in respect thereof. Amongst the recent judgments of this Court where it has been so held are *Sudha Bahri v. Sarabjit Singh* 1986 (1) PLR 244 and *New India Assurance Co. Ltd. Vs. Charan Kaur and Others*,

6. To over-come the hurdle of there being no plea regarding the liability of the Insurance Company being limited, counsel for the Insurance Company sought permission to amend the written statement with a view to raise this plea. This permission was declined by the order of this Court of November 4, 1985.

7. Faced with this situation, counsel for the Insurance Company sought to make capital of the fact that the Insurance Policy was already on record. The argument being that the Court was consequently duty bound to look into and give effect to the terms thereof. Support for this proposition was sought from the judgment of M.M. Punchhi J. FAO No. 502 of 1981 *Puma Chand v. Balbir Singh and Others*, decided on February 4, 1986, where it was held that as the Insurance Policy had come on record, the court must give effect to its terms even though no plea had been raised in the written statement that the liability of the Insurance Company was limited and an amendment to incorporate such a plea in the written statement is not allowed. A reading of this judgment, however, shows that it was only the peculiar circumstances of that case that such a view had been taken and it was specifically so mentioned. Further, none of the string of authorities where the view as expressed in *Sudha Bahri's* case (supra), had been taken, was brought to notice of the Hon'ble Judge, *Puran Chandel's* case (supra), cannot thus be taken to detract from the otherwise often repeated view of this Court to the contrary.

8. The imperative requirement of a specific plea by the Insurance Company to limit or wholly absolve itself from liability is amply brought out by the recent judgment of the Division Bench in *General Insurance Society Ltd. Ludhiana v. Avtar Singh* 1986 (1) PLR 683. A plea had been raised by the insured there that the liability of the Insurance Company was limited to Rs. 50,000/-. No such plea was, however, put-forth by the Insurance Company itself nor was any evidence led by it to show that its liability was limited to that extent, that is, Rs. 50,000/-.

It was held that the Insurance Company could not take any benefit of the averment made by the insured in the Grounds of Appeal or in the application when it had failed to take any plea or lead any evidence on this aspect of the matter.

9. It follows, therefore, that the liability of the Insurance Company must extend to the entire amount awarded as compensation to the claimants and no limitation can be placed upon such liability as was sought by the counsel for the respondent. In other words, the Insurance Company is liable for the entire amount awarded.

In the result, both the appeals are hereby accepted with costs. Counsels fee Rs. 500/- (One set only).