(2001) 12 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 1772 of 1994

Oriental Insurance Co. Ltd., Kapurthala APPELLANT

Vs

Vijay Kapur and Others RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2003) ACJ 1730 : (2002) 2 RCR(Civil) 45

Hon'ble Judges : Bakhshish Kaur, J

Bench : Single Bench

Advocate : Alok Jain, for the Appellant; S.K. Midha, for the Respondent

Final Decision : Dismissed

Judgement

Bakhshish Kaur, J.—The Oriental Insurance Co. Ltd. (hereinafter referred to as ''the Insurance Co.) against whom an award u/s 166 of the Motor Vehicles Act was passed by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as ''the Tribunal'') has preferred this appeal. The respondents in whose favour the award was made, were also not satisfied with the quantum of compensation paid to them, therefore, they have also filed cross objections. Hence both the appeals as well as the cross objections will be decided together.

2. On September 27, 1991, Rajesh Kapoor, was returning from Panipat to Delhi in a Maruti Van No.DAE 154 driven by him. At about 7.00 p.m., when he reached near Haryana Border, a truck No.767 driven by Narvail Singh, rashly and negligently, coming from the opposite side, struck against the Van. Rajesh Kapoor suffered grievous injuries. He succumbed to the injuries in the Civil Hospital at 7.45 p.m. Nirvail Singh was challenged for rash and negligent driving u/s 304-A IPC. Nirvail Singh controverted the averment? contained in the claim petition saying that he was not driving the truck rashly and negligently and, in fact, it was deceased who was under the influence of liquor and driving the van in a rash and negligent manner. He had taken all precautions to avoid the accident. The respondent No.2 (now appellant) had also raised objections. It was

pleaded, inter alia, that the petitioner has no locus standi to file the petition and the petition was bad for non-joinder of the insurance company of Maruti Van No. DAE 154. Secondly, the driver of the truck and Rajesh Kapoor-deceased had no driving licence.

3. The above controversy gave rise to the following issues framed by the Tribunal on 14th April, 1992 :-

"1. Whether Rajesh Kapoor had died in accident with truck No.PAT-767 due to the rash and negligent driving of respondent No.l? OPP.

2. Whether the claimants are entitled to compensation 1 If so, how much and from whom? OPP

3. Relief.

The learned Tribunal on the strength of evidence brought on the record awarded compensation of Rs. six lakhs along with interest at the rate of 15% per annum, in favour of the respondents and against the appellant and Nirvail Singh-driver which they were made liable to pay jointly and severally.

4. I have heard Shri Alok Jain, learned counsel for the appellant and Shri S.K. Midha, learned counsel for the respondent.

5. Nirvail Singh-driver has not come forward to challenge the award given by the Tribunal whereas the appellant alone has challenged the award on the ground that Nirvail Singh was not holding a valid driving licence. The licence has also been produced on record. In fact, the prayer of the appellant and summoning the driver along with driving licence was rejected.

6. The matter was referred to the Lok Adalat for settlement of the claim, but it did not materialise. However, in the wake of the objection taken by the petitioner with regard to the validity of the licence of Nirvail Singh, it has been observed by the learned President and member of the Lok Adalat as under:-

".......Since P.W.4 Suresh Kumar, Ahlmad of the Criminal Court, deposed about the validity of the licence of Nirvail Singh up to September 24, 1991, it is taken that particulars of the driving licence of Nirvail Singh must be available on the file of the criminal case.

At this stage, opportunity is allowed to the appellant-Insurance Company to verify particulars of the driving licence of Nirvail Singh as available on the file for the criminal case and its verification regarding validity from the Licensing Authority."

7. The objection raised on behalf of the appellant that no opportunity was given to the appellant to lead evidence regarding validity of the licence of the respondent as the original is not placed on record, therefore, the appellant is not liable to pay the compensation, is devoid of merit. On issue No.3, under para 15 of the judgment, the learned Tribunal has discussed that "P.W. Suresh Kumar

Ahlmad stated that driving licence of respondent No.l Narvail Singh was on the file which was valid up to 24.9.1991 and had taken it on superdari. Most probably he must have taken it on superdari for renewal purposes..He further stated that Rajinder Kumar also known as Rajesh Kapoor, was having driving licence bearing No.R-2269 of 1989 which was valid upto 27.1.1994". The tribunal has observed that respondent No.2 i.e. the Oriental Insurance Co. Ltd.-appellant had not led any evidence to prove that respondent was not competent to hold valid driving licence. Thus, it has been rightly held by the Tribunal that respondent No.2 i.e. the appellant is liable to pay compensation. Under these circumstances, there is no merit in the appeal preferred by the appellant. The same is hereby rejected.

8. As regards the cross objections filed by the claimants-respondents for the enhancement of the compensation, there is merit in the averments made by the respondents in the cross objections. Reference is made to the discussion contained under issue No.2. The relevant portion of the judgment given by the learned Tribunal under issue No.2 is reproduced as under :-

".......It is in evidence of P.W.5 Ram Chander, ASI that there was another girl with Rajesh Kapoor deceased namely Meena who had been meniioned by him in the list of witnesses in the criminal case as second wife. P.W.I and P.W.2 and P.W.3 have categorically stated that Rajesh Kapoor deceased has no second wife. There is no satisfactory evidence that Rajesh Kapoor had performed second marriage. However, it appears that he had brought her with him to enjoy life. She may be his keep. Therefore, he must be spending on himself more than l/3rd of his income. In such circumstances, it is presumed that he was spending half of the income upon himself. Therefore, loss to the estate is assessed at Rs.2500/- per month or Rs.30,000/- per annum."

9. It is well-settled that evidence recorded in a criminal case and forming part of another file cannot be looked into. Assuming that Meena, the aforesaid girl, was living with the deceased as his keep, as observed by the Tribunal, even then whether the original claimants can be deprived of the amount of compensation on the assertion that the deceased must have been spending more than l/3rd of his income on himself as well as on Meena, the girl who was living with the deceased as his keep. This factor of second wife cannot be taken into consideration. The finding of the Tribunal that the deceased was spending half of the income upon himself cannot take away the right of the claimants or their entitlement of compensation over and above l/3rd of the amount usually spent by a person upon himself. It is well-settled that the ratio of amount spent by a person upon himself is calculated not more than l/3rd of his income. Therefore, the income of the deceased Rajesh Kapoor, which has been assessed at Rs.5000/- p.m. comes to Rs.60,000/- per annum, the finding recorded by the Tribunal assessing the estate of the deceased to extent of Rs.2,500/- per month or Rs.30,000/- per annum is not correct. Thus, after deducting l/3rd from the monthly income of Rs.5,000/- which roughly comes to Rs.1,700/-, the

dependency is assessed at Rs.3,300 x 12 x 20 = 7,92,000. The claimants are, therefor, entitled to this amount of compensation, which is hereby allowed.

10. The objection raised by the learned counsel for the appellant that the Insurance Company is not liable to pay the entire amount cannot be accepted. In fact, in view of the law laid down in Oriental Insurance Co. Ltd v. Cheruvekkara Nafeesu and others, (2001-1)127 P.L.R. 422 (SC), the Company is liable to pay the entire amount to the claimants. It is also held therein that upon making such payment, Insurance Company can recover the excess amount from the insured by executing the award'' against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988.

The appeal filed by the Oriental Insurance Co. is dismissed while the Cross objection filed by the claimants is allowed to the extent indicated above. The disbursement of the amount, if deposited, shall be according to the shares already apportioned by the learned Tribunal.