(1996) 03 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 555 of 1994

Oriental Insurance Company Limited APPELLANT

Vs

Chinder Kaur and Others RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (1996) 2 ACC 271 : (1996) ACJ 1005 : (1996) 113 PLR 749 : (1996) 3 RCR(Civil) 39 : (1996) 3 RCR(Civil) 355

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Vinod Chaudhary, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—This is an appeal filed by the Insurance Company against the Award of the learned Motor Accident Claim Tribunal, Hissar, by which the learned Tribunal has awarded a sum of Rs. 1,54,100/- to respondents 1 and 2. The only point argued before us by the learned Advocate for the appellant is that the Insurance Company was not liable to pay the compensation, in view of the fact, that there was a breach of condition of the policy of Insurance. The breach of policy which is alleged is that the vehicle was a goods vehicle and that it carried passengers and hence there was breach of condition. It is also argued that in other connected cases decided by the same common judgment the Insurance Company has been absolved from paying the amount while in this particular case the tribunal has erred in taking a different view.

2. Perusal of the impugned award shows that the facts of the case under appeal are different from those in the other connected matters decided by the common judgment, because in the other cases, the compensation was awarded in connection with the persons travelling in the truck, while in this appeal before us, the compensation is for the death of a person who was not the occupant of the truck. He was the driver of the on-coming truck with which the accident was

caused.

3. Learned Advocate for the appellant argued that because of breach of condition of policy, though the deceased was not occupant of the truck, the Insurance Company could not be held to be liable. He has cited before us a case of Channo Devi and Ors. v. Het Ram and Ors. (1983) 85 P.L.R. 584. It is a judgment of the Division Bench of this High court. From the head note and the contents in the judgment regarding this point in paragraph 6, it is not clear that the compensation was for the person who was occupant of the truck or for the person other than occupant of the truck. Therefore, this judgment does not in any way help the appellant.

4. In a some what similar case, the Andhra Pardesh High Court in the case of New India Assurance Co. Ltd. and Others Vs. Kothapalli Venkateswara Rao, has made the insurance company liable to pay the compensation. The facts which appear from that judgment are that the truck while carrying good fell down by the side of a culvert resulting in a heavy damage to the vehicle and the death of its driver. Four other persons travelling as gratuitous passengers, though not connected with the goods, sustained injuries and one of them died. The owner of the truck filed a civil suit against the Insurance Company for costs of repairs of the vehicle and amount of compensation paid by the owner to the widow of deceased driver for the claim made by her under the workmen''s Compensation Act. The truck was comprehensively insured, including coverage for claims under Workmen''s Compensation Act. Trial Court decreed the suit. Insurer filed an appeal on the ground that the policy did not cover use for the conveyance of passengers for hire or reward and that the driver unauthorisedly carried the passengers in the truck. However, the Insurance Company was held liable to pay the amount. It was held that a minor deviation by the driver in carrying passengers unauthorisedly cannot disentitle the owner from enforcing his claim.

5. Another decision on this point is in the case of Raghunath Eknath Hivale Vs. Shardabai Karbhari Kale and others, In that case, the truck was loaded with 700 baskets full of tomatoes and also carrying 15 to 16 owners thereof and while trying to avoid collision with a jeep coming from the opposite direction, the truck entered a nearby field and turned turtle and two persons walking on the road side came under the truck and died. The Tribunal had exonerated the insurance company of the truck on the ground that the truck was carrying more than seven persons as passengers which is prohibited under Rule 118 of the Bombay Motor Vehicles Rules. It was held by the Bombay High Court in that case that a breach of the condition of the permit is not the same thing as the breach of the purpose for which it is used and the contravention of one or the other condition of the permit is not a contravention of the purpose for which the permit is used.

6. In the present case before us, the driver might have caused the breach of condition of policy by carrying passengers in the truck. However, the person for whose death the claim was made by the claimants/respondents was not the passenger in the truck. There was no nexus between the breach of condition of

policy and the accident and also there was no nexus between the breach of policy and third party which died because of the accident. Therefore, the defence available to the Insurance Company cannot be stretched to the extent of saying that inspite of the fact that there being no nexus as above, the third party cannot claim amount from the Insurance Company. On the contrary, it will be absurd to hold so. There- fore, the appeal deserves to be dismissed.

7. Before parting with this judgment, we are forced to observe that the public institution like an Insurance Company has filed this appeal simply for the sake of filing it. By filing such appeals the work of the Courts is Unnecessarily increased. If public bodies refrain from filing frivolous cases as the present appeal, the public money will be saved and the Court''s time can also be saved. It will not be out of place to suggest that public bodies such as Insurance Companies and State Transport Corporations who are equipped with the services of able law officers and eminent lawyers can, in most of the motor accident claims cases, calculate the amount payable themselves and pay the amount in the Court and follow the procedure as provided under Order 24 of the Code of Civil Procedure. If this is done, in most of the cases the claimants would not pursue their claims of the remaining amount and litigation in the Courts on the whole will decrease. Moreover, the liability of public bodies to pay the interest will also decrease.

8. With these observations, this appeal is dismissed.

