
(2008) 02 P&H CK 0210
In the Punjab And Haryana At Chandigarh

Oriental Insurance Company Limited	APPELLANT
Vs	
Smt. Santosh and Others	RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166, 174, 95

Citation : (2008) 02 P&H CK 0210

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Saron, J.—This order will dispose of FAO Nos. 5435 to 5441 of 2005 which arise out of the same accident that occurred on 18.1.2004. The claim applications filed u/s 166 of the Motor Vehicles Act, 1988 ('Act' ? for short) were consolidated and disposed of by the learned Motor Accident Claims Tribunal, Rohtak ('Tribunal' -for short) by a common order dated 6.9.2005 which is assailed by the appellant-Insurance Company. About 14 passengers were travelling in a Tata 407 vehicle bearing registration No. HR33GA/1287. It was being driven by Jaipal from Village Badauli to Urlana. The occupants travelling in the Tata 407 vehicle were returning after attending a marriage party at Village Badauli. On the way, Jaipal lost control of the vehicle as it was being driven at a high speed. It overturned in a pit and injuries were sustained by five occupants and two persons died. Therefore, the claims have been made by five of the injured and LR's of two of the deceased occupants. The compensation has been awarded to the claimants, the details of which are mentioned in para 61 of the impugned judgment of the learned Tribunal.

2. Learned Counsel appearing for the Insurance Company has contended that being a goods vehicle the liability of the insurer does not cover the gratuitous passengers carried by said vehicle. Therefore, it is submitted that when there is no liability of the Insurance Company, the order made to pay the amount due to the claimants and then recover the same from the insured is not sustainable. In

support of his contention, learned Counsel cites *M.V. Jayadevappa and Anr. v. Oriental Fire and General Insurance Co. Ltd.* and Ors. 2005 ACJ 1801 , *National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others*, and *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, .

3. After giving my thoughtful consideration to the matter, it may be noticed that insofar as goods vehicle, as in the present case, is concerned there is no liability of the Insurance Company. The Supreme Court in *M.V. Jayadevappa and Anr. v. Oriental Fire & General Insurance Company Ltd. and Ors.* (supra) considered the case where the policy described the vehicle as a commercial vehicle i.e. Chevrolet lorry with open body and the licensed carrying capacity was specified as two tons. Besides, it was nowhere mentioned that the vehicle was authorized to carry passengers. It was held that the vehicle was a goods vehicle and was not authorized to carry passengers. Accordingly, the Insurance Company was held not liable for death/injury to the passengers. In *National Insurance Co. Ltd. v. Bommithi Subbhayamma and Ors.* (supra) it was held that the statutory liability u/s 147(1)(b) of the Act does not cover gratuitous passengers carried in a goods vehicle. The award given for death of such a passenger was set aside. In the circumstances, the learned Tribunal has rightly held under issue No. 11 that there is no liability of the Insurance Company.

4. The grievance of the appellant, however, is that the Insurance Company is not liable to pay the amount to the claimants and then recover the same from the owner. The learned Tribunal relied on the case of *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, , wherein in a case where the driving licence was found to be fake and the Insurance Company absolved of its liability, it was held that the Insurance Company would be liable to pay the compensation amount jointly and severally with the owner. However, it was given the liberty to realize the amount from the owner/insured. Similarly, in the *Oriental Insurance Company Limited v. Cheruvakkara Nafeessu and Ors.* (2001) 2 SCC 491, the liability of the Insurance Company was limited to Rs. 50,000/- as against third party risk. The Supreme Court while limiting the liability to Rs. 50,000/- allowed the appeal of the Insurance Company by holding that it was liable to pay the entire award amount to the claimants and upon making such payment it could recover the excess amount from the insured by executing the award against the insured to the extent of excess payment as per Section 174 of the Act. The case *New India Assurance Co. Ltd. v. C.M. Jaya and Ors.* (supra) referred to by the learned Counsel for the appellant, the liability of insurer in respect of third party risks was limited and the insurance policy was not taken by paying higher premium for payment of compensation. In such a case, the insurer was held liable only to the extent limited u/s 95(2) of the Act and not liable to pay the entire amount of compensation. The said proposition is beyond dispute and there indeed is no liability of the Insurance Company. The question is only of making the payment in the first instance by the appellant and thereafter recovering it from the insured/owner, which is based on case law. In the circumstances, there is no error in the orders passed by the learned Tribunal. Accordingly, the appeals

filed by the Insurance Company are dismissed.