
(2008) 03 P&H CK 0078
In the Punjab And Haryana At Chandigarh

Oriental Insurance Company Ltd.

APPELLANT

Vs

Monika Verma and Others

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Citation : (2009) ACJ 1651 : (2008) 3 PLR 83 : (2008) 3 RCR(Civil) 693

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal filled by the Insurance Company is directed against the award dated 22.3.2006 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (for brevity, " The Tribunal") awarding a compensation of Rs. 3,50,000/- to the claimants on account of death of Prem Verma in a motor vehicle accident.

2. In nutshell, the facts of the case are that on 7.11.2004 at about 3.00 P.M., Prem Verma was going from Morinda to Bassi Pathana in car bearing No. HR-06C-9080 being driven on the left side at a slow speed and when it reached in the area of Bahadurgarh behind Baba Mazaar, a truck bearing registration No. HR-58A-2215 being driven by its driver rashly and negligently came from the opposite direction on the wrong side of the road and struck against the car. Prem Verma died on account of the injuries received by him in the accident. It was pleaded that Prem Verma was 26 years of age and was earning Rs. 5,000/- per month from the business of jewellery. The claimants filed a claim petition for compensation before the Tribunal on account of the death of Prem Verma.

3. Upon notice, the driver and the owner of the offending vehicle, i.e. truck filed a joint written statement. The factum regarding the death of Prem Verma was denied for want of knowledge. It was pleaded that no accident had taken place with truck No. HR-58A-2215 and a false FIR has been lodged against the driver. It was further pleaded that the said truck was insured with the Oriental

Insurance Company Ltd. Yamuna Nagar vide Cover Note No. 629351 dated 15.5.2004. The Insurance Company in the written statement pleaded that the driver of the said truck was not holding a valid and effective driving licence at the time of the accident and that the claim petition was bad for nonjoinder of the owner, the driver and the insurer of the car bearing registration No. HR-06C-9080. Denying the averments made in the claim petition, the prayer for dismissal of the claim petition was made.

4. From the pleadings of the parties, the Tribunal framed the following issues:

1. Whether respondent No. 1 Gurmit Singh caused the death of Prem Verma, on account of rash and negligence driving of truck No. HR-58A-2215 on 7.11.2004 in the area of village Bahadargarh? OPP

2. Whether claimants are entitled to compensation, if so, how much & from whom? OPP

3. Whether respondent No. 1 was not holding a valid driving licence at the time of alleged petition? OPR-3

4. Whether the claim petition is bad for non-joinder of owner, driver and insurer of car No. HR-6C-9080? OPR-3

5. Whether the truck in question was not having a valid route permit at that time? OPR-3.

6. Relief.

5. After analyzing the evidence available on record, the Tribunal under issue No. 1 held the present case to be a case of negligence of both the drivers of the offending vehicles in causing the accident issue No. 3 was decided against the Insurance Company holding that the driver of the offending truck was holding a valid and effective licence at the time of the accident. Accordingly, the claim petition was allowed by the Tribunal vide award dated 22.3.2006 awarding a total compensation of Rs. 3,50,000/- along with interest at the rate of 6% per annum from the date of claim petition till payment to claimants No. 1 and 2 only. The said compensation amount was liable to be paid jointly and severally by the Insurance Company, the driver and the owner of the offending vehicle and they have been held entitled to recover half of the amount of compensation from the other tort reasons under law.

6. I have heard the learned Counsel for the parties and perused the record with their assistance.

7. The main contention raised in this appeal is that the Tribunal while deciding issue No. 1 had recorded a finding that both the drivers of the offending vehicles, i.e. the truck and the car, were negligent in causing the accident but the Tribunal held the claimants entitled to recover the entire amount from the driver, the owner and the Insurance Company of the offending truck. Learned Counsel for the appellant-insurer contents that as the driver, the owners and the Insurance

Company of the offending car had not been impleaded in the claim petition, the claimants were not entitled to recover the entire amount of compensation from them. In such an eventuality, the Tribunal could not have ordered the recovery of more than 50% of the amount of the compensation from the driver the owner of the offending truck as well as the appellant.

8. Learned counsel for respondent No. 1 has controverted the aforesaid submissions and placed reliance upon the judgment of this Court in F.A.O. No. 484 of 1993 titled as Raj Kumar v. Union of India decided on 22.9.2006. The issue arises for consideration in the present appeal is whether in case of a composite negligence of drivers of two vehicles, the claimant can recover the entire amount of compensation from one party without impleading the owner, the driver and the insurer of the other vehicle as a party?

9. This Court, in Raj Kumar's case (supra) while relying upon a Division Bench of this Court in Oriental Insurance Co. v. Smt. Parveen Juneja (2002) 131 P.L.R. 644 has held as under:

If there was any negligence of the driver of the tractor trolley then also it cannot be said that the driver of the car was not negligent and when this is the position, if the driver of the tractor trolley is to be held guilty then also it is a case of composite negligence and not contributory negligence. As per the settled law, the claimant can choose to sue any of the tort feors and in such a case the question of contributory negligence does not arise.

10. Accordingly, it is held that in case of composite negligence the claimant can recover the amount from one of the joint tort-feasors without even impleading the other tort-feasor as a party respondent and in that situation the only remedy to the tort-feasor is to recover the amount from the other tort-feasor but the claimant cannot be denied the full compensation. In view of the above, there is not merit in this appeal and the same is hereby dismissed.