

(2007) 08 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Mantari (Widow) and Others

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2008) 2 PLR 175 : (2007) 4 RCR(Civil) 648

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.—This order shall dispose of the three appeals mentioned above as they arise out of common award passed by the learned Motor Accident Claims Tribunal, Bhiwani (for short the Tribunal).

2. The claimants Smt. Mantari and others along with Rameshwar filed two separate claim petitions u/s 166 of the Motor Vehicles Act, 1988 (for short the Act).

3. Mantari and others claimed compensation on account of death of deceased Rattan Singh. The deceased along with other passengers was said to be travelling in Tata four-wheeler bearing No. HR-31-2976. The said four-wheeler was coming from Village Bidola to Isherwal. The vehicle was being driven by Sube Singh-respondent in a rash and negligent manner at a very high speed in zig-zag manner. It was claimed that in spite of warning the driver continued to drive the vehicle rashly and negligently. It was further stated that the driver lost control over the vehicle which struck against a Kikar tree. As a result thereof the vehicle turned turtle in which Rattan Singh got grievous injuries and later on succumbed to those injuries.

4. The claimant Rameshwar in the connected claim petition claimed that he suffered permanent disability and disfigured.

5. Claimants Mantari and others claimed a compensation to the tune of Rs. 5 lacs on account of death of Rattan Singh on the ground that he was aged 30 years

and was working as agriculturist and as labourer and was earning Rs. 3,000/- per month.

6. Both the claim petitions were contested by the respondents. Respondent No. 1 denied that he was owner of four -wheeler. It was also claimed that respondent No. 2 was not driver of the offending vehicle nor the owner and therefore, it was claimed that the claim petition qua him he dismissed. Jagdish alias Jai Parkash respondent No. 1-A claimed that he had already sold the vehicle in question to respondent No. 1 and possession thereof was also given and therefore, he has been wrongly impleaded as a party. The Oriental Insurance Company, raised objection that the offending goods vehicle was carrying passengers in violation of conditions of policy and as such the company was not liable to pay compensation. It was further claimed that the driver did not have a valid driving licence whereas other allegations were also denied.

7. On the pleadings of the parties, the learned Tribunal framed following issues in main petition:

1. Whether the, accident took place due to rash and negligent driving of four-wheeler No. HR-31/2976, as a result of which the petitioner sustained injuries and Rattan Singh dies as alleged? OPP

2. Whether the petitioners are entitled to compensation and if so from whom and to what amount? OPP

3. Whether the petitioners have no locus standi to file the petition? OPR

4. Whether the petitioners are estopped by their act and conduct from filing the present petition? OPR

5. Relief.

On Issues No. 1 and 2 learned Tribunal came to the conclusion that the accident had occurred due to rash and negligent driving of four -wheeler as a result whereof Rameshwar suffered injuries whereas Rattan Singh succumbed later to injuries sustained due to accident.

8. Rameshwar injured was held entitled to a sum of Rs. 10,000/- on account of injuries suffered by him as well as for mental agony and pain and suffering. The claimants Mantari and others were held entitled to a sum of Rs. 1,72,800/- as compensation. The learned Tribunal assessed the income of deceased to be Rs. 1,200/- per month and dependency was taken to be Rs. 900/- and multiplier of 16 was applied and thus, the total amount of compensation was assessed at Rs. 1,72,800/-. As regards the liability of the respondent learned Tribunal was please to lay down as under:

16. Now coming to the question, who is liable to pay the compensation. It was argued that respondent No. 1 Sube Singh is not the driver nor he knows driving and RW1 Sube Singh has stated on oath that he is running a Poultry farm and he has not caused any accident and he is not the owner of the four wheeler. PW2

Mantari has also admitted that Sube Singh is running a poultry farm. Even if it is admitted that he is running a poultry farm, and he was selling chickens it does not mean and will not conclude that he cannot drive a vehicle and as such he is liable to pay the compensation. Admittedly, the offending vehicle is insured with respondent No. 3 as he is evident by Ex.R1, copy of the policy and the owner shown is Jai Parkash i.e. Respondent No. 2. The testimony of PW 5 Vikram Singh, registration clerk has proved from register that vehicle No. HR-31/2976 is registered in the name of owner Jaiparkash son of Gopal Singh. Now Jaiparkash, the owner of the vehicle appeared as RW2 and made an attempt to blame on his driver-respondent No. 1 Sube Singh. He stated that he had sold the vehicle to Sube Singh for Rs. 2,22,000/-. RW3 Raj Kumar has also stated that the offending vehicle was sold by Jai Parkash to Sube Singh respondent No. 1 in January, 1992 for a sum of Rs. 2,22,000/- in his presence. He has stated that Sube Singh was driving the vehicle. No documentary evidence like any affidavit or sale deed or agreement has been produced to show that the ownership has been transferred in the name of Sube Singh, respondent No. 1, as such, the court has to believe the registered owner as the owner. Thus, I hold that both respondent No. 1 and 1-A are liable.

17. Now coming of the liability of respondent No. 2 i.e. the insurance company, it was argued that admittedly, the vehicle in question is a goods vehicle and it was used for carrying marriage party and such there is violation of the terms of policy. This line of contention has got no merit as it has come in the testimony of PW4 Hanuman that four wheeler was carrying dowry articles and other articles for the marriage. In his cross-examination, he has denied his suggestion that four-wheel was carrying only members of the party and not the goods. Thus, it appears that same passengers of the marriage party were along with their goods. Thus, the claimants of the unfortunate accident cannot be declined relief by taking a strictly technical view of the situation. Admittedly, the vehicle No. HR-31/2976 is insured with respondent No. 2 and respondent No. 1 was the driver of the offending vehicle at the relevant time. Respondent No. 2 has not led any evidence whatsoever to show that he was not having valid driving licence at the time of accident. Respondent No. 1-A Jai Parkash, is the registered owner of the vehicle. Thus, I hold that all the three respondents are liable to pay the compensation. These issues are decided accordingly in favour of the petitioners and against the respondents.

Issues Nos. 3 and 4 were decided against the respondents and consequently claimant Rameshwar was held entitled to compensation to the tune of Rs. 10,000/-, whereas the claimants Mantari and others were allowed compensation to the tune of Rs. 1,72,000/-, as mentioned above.

F.A.O. No. 2702 of 1998.

9. Mr. N.K. Khosla, learned Counsel appearing on behalf of the appellant Insurance Company in F.A.O. No. 2702 of 1998 has challenged the impugned part of the award vide which the liability was fixed on the insurance company.

The reasons for fixing liability on the Insurance Company by the learned Tribunal was that PW4 Hanuman had stated that the four-wheeler was carrying dowry articles and other articles of marriage and some passengers of the marriage party were going along with the goods. The contention of the learned Counsel for the appellant was that even if the finding of the learned Tribunal is accepted still the liability could not be fastened on the Insurance Company in view of the law laid down by Hon"ble Supreme Court in the case of *New India Assurance Co. Ltd. v. Asha Rani* (2003)133 P.L.R. 1 (S.C.). Paras No. 9 and 4 of the said judgment read as under:

9. In *New India Assurance Company Vs. Shri Satpal Singh and Others*, , the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act, 1939. are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorized representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorized representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles (Amendment) Act of 1994 is examined, particularly Section 46 of Act 54 of 1994 by which expression "injury to any person" in the original Act stood substituted by the expression "injury to any person, including owner of the goods or his authorized representative carried in the vehicle" the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if widest interpretation is given to the expression to any person it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The objects and reasons of Clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994, and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorized representative carried in the vehicle" which was added to the pre-existed expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand, it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in *New India Assurance Company Vs. Shri Satpal Singh*

and Others, therefore, must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.

4. The controversy in the instant case centers round the change effected in the Motor Vehicles, Act. 1988 vis-a-vis the Motor vehicles Act, 1939. As would appear from the discussions made hereinafter a goods vehicle was required to be compulsorily covered by insurance policy in terms of 1939 Act but was not so required in terms of 1988 Act.

In the present case the accident has occurred prior to amendment of 1994 and therefore, in view of the law laid down by Hon"ble Supreme Court finding of learned Tribunal cannot be sustained.

Consequently, F.A.O. No. 2702 of 1998 is accepted and it is held that the insurance Company is not liable to pay the compensation as ordered.

F.A.O. No. 752 of 1999

10. This appeal has been filed by the claimant-appellants for enhancement of compensation awarded by the learned Tribunal.

11. Mr. Sunjay Vashisth. learned Counsel appearing for the appellants in this appeal contended that the learned Tribunal was wrong in assessing the monthly income of the deceased to be only Rs. 1,200/-. The contention of the learned Counsel for the appellants is that the statement made by the widow qua the income of the deceased went unrebutted and therefore, his income has to be presumed to be Rs. 3,000/-. This contention of the learned Counsel for the appellants cannot be accepted in the absence of any evidence. Once it was proved on record that the deceased was only "agricultural labour his income was required to be assessed by some guess work by treating him to be an able bodied person capable of earning some amount. In view of the evidence brought on record and keeping in view the family of the deceased it would be safe to assess his monthly income at Rs. 1,500/-. Out of that dependency of the claimants would come to Rs. 1,200/- per month and keeping in view the age of the deceased the multiplier to be applied would be 17. Thus the compensation payable to the claimants Mantari and others would come to Rs. 2,44,800/- (1,200 x 12 x 17). In addition thereto the claimants would also be entitled to Rs. 5,000/- on account of consortium and Rs. 2,000/- on account of funeral expenses. Thus the total compensation comes to Rs. 2,51,800/-. The claimants would also be entitled to interest at the rate of 9 per cent per annum at the enhanced amount of compensation.

Compensation shall be payable by respondent No. 1 and 1-A (in the claim

petition) jointly and severally. However, respondent insurance company is absolved of its liability for the reasons given in F.A.O. No. 2702 of 1998.

F.A.O. No. 731 of 1999.

12. Learned Counsel for the appellant Rameshwar in this appeal has challenged the award of Rs. 10,000/- on account of injuries suffered. The contention of the learned Counsel for the appellant was that the claimant-appellant had suffered head injuries on account of which he suffered disability to the tune of 70 per cent. The contention of the appellant was that the disability certificate of the appellant was duly proved on record but the same has been disbelieved wrongly.

13. After hearing the learned Counsel for the appellant, I find force in this contention. Merely because the claimant was examined after a lapse of more than 3 years of the accident the evidence of the doctor could not be ignored on that ground. Learned Tribunal, in fact, did not disbelieve the story in toto and granted Rs. 10,000/ as compensation. The said compensation in view of the injuries suffered cannot be said to be adequate. However, the learned Tribunal was right in not giving any compensation towards the treatment as no evidence was produced on record.

14. Keeping in view the totality of the circumstances the compensation on account of the permanent disability suffered by Rameshwar is accordingly enhanced to Rs. 40,000/- and the appellant would also be entitled to interest on the enhanced amount at the rate of 9 per cent per annum.

However, liability of payment of compensation shall be on respondent No. 1 and 1-A (in the claim petition) jointly and severally. However, respondent insurance company is absolved of its liability for the reasons given in F.A.O. No. 2702 of 1998.