
(2000) 11 P&H CK 0189
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1840 of 1997

Resham Kaur

APPELLANT

Vs

Ramesh Kumar

RESPONDENT

Date of Decision : 06-11-2000

Acts Referred:

Citation : (2001) ACJ 1976 : (2001) 1 RCR(Civil) 340

Hon'ble Judges : R. L. Anand, J

Bench : Single Bench

Advocate : Mr. Parveen Kumar, for the Appellant; Mr. M.S. Kang and Mr. B.D. Sharma, for the Respondent

Judgement

R.L. Anand, J.—This is an appeal and has been directed against the award dated 3.3.1997 passed by Motor Accident Claims Tribunal, Hoshiarpur, which dismissed the claim petition of the petitioner-appellants Resham Kaur, Tilak Raj, Gurbaksh Kaur, Sheela Devi, Dharam Chand and Kartari against Ramesh Kumar, driver of truck No. PUH 5446, Hari Mitter, owner of truck No. PUH 5446, New India Insurance Company, which insured the said truck, Suhash Chander, driver of Car No. CH-01-C 9502, owner of the car and the Insurance company, with which the car was insured.

2. The case pleaded by the appellants before the Tribunal was that Resham Kaur is the widow of deceased Roop Lal. She also filed the petition as natural guardian of Tilak Raj, her son. Gurbaksh Kaur and Sheela Devi are the daughters of deceased and Dharam Chand and Kartari are the parents of deceased Roop Lal, who, according to the appellant-claimants, was a young person of 48 years and was a skilled-mason and was earning Rs. 2,500/- approximately per month. The accident took place on 1.4.1993 near the Gurudwara of village KotlaGonspur within the jurisdiction of Police Station Sadar Hoshiarpur. The deceased was allegedly travelling in truck No. PUH 5446 driven by respondent No. 1 Ramesh Kumar and was returning after attending Satsang at Dera Beas of Radha Soami. The deceased survived for six days only and, according to the claimants, they

have spent a sum of Rs. 35,000/- on his medical treatment. Two vehicles were involved. One is truck No. PUH 5446 and other is car No. CH-01-C 9502. The case set up by the claimants in the claim petition was that truck was hired from village Sainchan, Tehsil and District Hoshiarpur for going to Dera Beas of Radha Soami to attend Satsang and when it was returning from Dera Beas to village Thathlan on 1.4.1993 and reached near the Gurudwara of village Kotla Gonspur, a car bearing registration No/CH-01-9502 came from the opposite direction. When the driver of the car slightly turned the car, the nut-bolts of the Kamani of the truck opened due to the slight turned as a result of which the rear wheels of the truck opened and the truck fell down on one side of the road. It hit against the car and the car turned towards other side. The passengers of the car also got injuries. Similarly the passengers of the truck sustained injuries, besides the deceased. The people from the nearby village arranged a vehicle and removed the injured to Civil Hospital, Hoshiarpur for treatment. It has been specifically pleaded by the claimants that both the vehicles were going on their correct side of the road. With these allegations the claimants had claimed a compensation of Rs. 2,20,000/- against the driver, owner and insurance company of the truck and the driver, owner and insurance company of the car.

3. Notice of the claim petition was given to the respondents. Respondent No. 1 Ramesh Kumar, respondent No. 2 Hari Milter, driver and owner respectively of the truck, and respondent No. 3 New India Insurance Company, which insured the truck, filed written statements and denied the allegations. The stand taken up by the insurance company was that the driver of the truck was not having a valid driving licence at the time of the accident and, therefore, the insurance company is not liable to pay the compensation. Moreover, the deceased Roop Lal was a gratuitous passenger and thus the insurance company is not liable to reimburse the amount of compensation. No contest was given by the owner and insurance company of the car.

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

1. Whether Rup Lal died due to rash and negligent driving of respondent No. 1 and respondent No. 4, while driving truck No. PUH 5446 and Car No.

CH-01 -C 9502 respectively ? OPA

2. If issue No. 1 is proved to what amount the claimants are entitled to receive compensation and from whom ? OPA

3. Whether the respondent No. 1 was having a valid driving licence ? If so, its effect ? OPR-1

4. Whether deceased Rup Lal was travelling as a gratuitous passenger in the truck at the time of alleged accident ? If so, its effect ? OPR

5. Relief.

5. The parties led oral and documentary evidence in support of their respective

cases. On the conclusion of the proceedings, issues No. 1, 3 and 4, which were taken up together by the Tribunal, were decided against the claimants and in favour of the contesting respondents. Issue No. 2 was decided partly in favour of the claimants and compensation was assessed at Rs. 62,400/-. But by virtue of findings under Issues No. 1, 2 and 4, the claim petition was dismissed. Aggrieved by the award of the Tribunal, the present appeal.

6. I have heard the counsel for the parties and with their assistance have gone through the records of the case.

7. So far as the negligence part is concerned, I am of the considered opinion that it is the case of the appellants themselves that with the slight turn of the truck, the nut-bolt of the Kamani of the truck opened, as a result of that the wheels of the truck truck become separate from its body. In these circumstances, it cannot be said that the accident had taken place on account of the negligence of respondent No. 1 Ramesh Kumar. Further, the case pleaded by the appellants is that both the vehicles were going on the correct side of the road. Faced with this difficulty, the learned counsel for the appellants submitted that the accident has been admitted by Ramesh Kumar and he attributes the negligence to the driver of the car. Parties are not permitted to lead such type of evidence which is beyond their pleadings. In this view of the matter, it is held that this accident had taken place on account of the circumstances other than the negligence which can be attributed to respondent No. I Ramesh Kumar. Therefore, the appellants are not entitled to the benefit on account of the negligence of Ramesh Kumar respondent No. I.

8. It was then submitted by the counsel for the appellants that at least a sum of Rs. 50,000/- should have been awarded to the appellants on account of no fault liability. There is merit in the submission made by the counsel for the appellants. On the contrary, the learned counsel appearing on behalf of the New India Insurance Company submitted that Ramesh Kumar had no valid driving licence on the date of the accident which took place on 1.4.1993. The driving licence of the said respondent was faked one and, therefore, the endorsement of renewal has no meaning. He submitted that the matter as to whether the insurance company can be held liable on the plea if the original driving licence is a faked one though it might have been renewed by the transport authorities in a proper manner is pending before the Hon'ble Full Bench, and thus the insurance company is not liable to pay the compensation. It was further pleaded by the learned counsel that the truck in question was got insured on 1.4.1993 itself and in these circumstances the insurance company is not liable to pay Rs. 50,000/- and the liability if any is that of the owner and driver of the truck.

9. I do not subscribe to the arguments raised by the counsel for Respondent No. 3. It is not pleaded by the insurance company at what time the cover-note/policy was issued. The policy was issued on 1.4.1993 for a period of one year, meaning thereby the time will start from the midnight of 31.3.1993 and will expire on 31.3.1994. The accident took place in this case on 1.4.1993 at about

6.45 p.m. In these circumstances, I hold that the insurance company will be liable to pay the amount of compensation.

10. So far as the plea of gratuitous passenger is concerned, this point has now been decided by the Hon''ble Supreme Court in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, .

11. Resultantly, this appeal is allowed by setting aside the award of the Tribunal and it is hereby directed that respondent No. 1 to 3 shall pay a sum of Rs. 50,000/- jointly and severally as no fault liability to claimants No. 1, 2, 5 and 6 within three months from today, failing which it will be open to these claimants to file an execution to recover the said amount. Out of Rs. 50,000/-, a sum of Rs. 10,000/- shall be paid to Dharam Chand and Kartari, the parents of the deceased, in equal shares and the remaining amount of Rs. 40,000/- shall be paid in equal shares to Resham Kaur and her minor son Tilak Raj. No relief is being given to Gur-baksh Kaur and Sheela Devi as they are married.

It may be clarified here that in the event of the payment of compensation by the New India Insurance Company to claimants No. 1, 2, 5 and 6, it will be open to it to claim the said amount from the owner/driver of the truck involved in the accident.

12. Appeal allowed.