
(2012) 07 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Case No : FAO No's. 712 and 959 of 1994 (O and M)

Resham Singh

APPELLANT

Vs

Smt. Channo Devi and others

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(a)(ii), 15, 3

Citation : (2012) 168 PLR 440

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Ashit Malik in FAO No. 959 of 1994 and Rakesh Nagpal in FAO No. 712 of 1994, for the Appellant; Rakesh Nagpal for Respondent No. 1 in FAO No. 959 of 1994, Ashit Malik for Respondent No. 1 to 4 in FAO No. 712 of 1994 and None for others, for the Respondent

Judgement

K. Kannan, J.—Both the appeals are connected arising out of the same accident. The appeal in FAO No. 712 of 1994 is at the instance of the owner-cum-driver of the vehicle, which was involved in the accident for the liability cast on him and FAO No. 959 of 1994 is for enhancement of the compensation awarded against the owner-cum-driver only and exonerating the Insurance Company. The Insurance Company was exonerated on the ground that on the date of accident, namely, 09.01.1991, the licence of the driver had expired and the renewal had been made subsequently on 09.02.1991, that is, beyond a period of 30 days from the date of expiry of the licence. The licence, as a matter of fact, was shown to have expired on 09.12.1990. The appeals by the claimants are only on the issue of quantum since the Tribunal itself found the owner-cum-driver to be negligent. I have not been shown through any argument by the counsel appearing for the owner as to how the finding regarding negligence is wrong. Consequently, I confirm the finding and would address the case for consideration only as regards the quantum.

2. The deceased was said to be aged 32 years, although postmortem showed

aged to be 35 and was said to be an agriculturist having 5 acres of land and also working as a mechanic. The evidence of the widow was that her husband used to earn Rs. 3,500/- per month through his cultivation and as a mechanic of diesel engine. The Tribunal provided for a 1/3rd deduction and adopted a multiplier of 16 to determine the loss of dependency and after including the medical expenses provided for Rs. 1,36,244.90 as compensation. The learned counsel appearing on behalf of the petitioner would point out that although there was no proof relating to the fact that he was working as a motor mechanic, the Tribunal was in error in taking the income to be only Rs. 1,000/- per month. He was supporting a family of the widow and three minor children and when there was evidence with reference to his ownership of land about 5 acres, it ought to have provided for the income as claimed by the petitioner. A villager working as motor mechanic cannot be expected to have any documentary proof and I see no reason to discard such an evidence. I will take the income to be Rs. 2,000/- per month at the relevant time and provided for a 1/4th deduction for personal consumption and take the contribution to the family at Rs. 1,500/- per month. I will adopt the same multiplier as taken by the Tribunal and find total loss of dependency at Rs. 2,88,000/- and make provision for Rs. 5,000/- towards loss of consortium to the wife and Rs. 2,500/- for love and affection to each of the minor children. I will make further addition of Rs. 5,000/- towards loss to estate and Rs. 2,500/- towards funeral expenses and find the total compensation at Rs. 3,08,000/-. The amount in excess of what has been determined by the Tribunal already, shall attract interest @ 6% per annum from the date of petition till the date of payment.

3. As regards the liability, the learned counsel appearing on behalf of the owner-cum-driver who are appellants in FAO No. 712 of 1994 would contend that it was not as if the driver did not know driving especially since the driver held driving licence from the year 1974 and his licence expired on 09.12.1990 and when he had obtained a renewal on 09.02.1991 even the charges for the late renewal had been collected. It must, therefore, be taken that he was duly licensed even on the date of the accident and the Insurance Company ought not to have been exonerated. The language employed u/s 3 of the Motor Vehicles Act, 1988 is that the driver must be a person who holds an effective driving licence. Section 149(2), which provides for permissible defences for the insurer, allows under Clause 2(a)(ii) that there had been a breach of condition excluding the driving by a person who was not duly licensed. The issue is never that the driver did not know driving. The issue is whether there had been a violation of terms of policy and whether there was a stipulation requiring the driver to be duly licensed in order that the insured could claim indemnity. The necessity of having to possess a driving licence at all times for a person, who drives the vehicle obtains through Section 3 of MV Act statutorily. The absence of such a licence enables an insurer u/s 149(a)(ii) referred to above as well as a policy condition that may exclude liability for a person driving the vehicle without being duly licensed. Admittedly, the driver's licence expired on 09.12.1990, Section 15 allows a grace period of

30 days within which such renewal could be obtained. If an application, therefore, had been filed within 30 days, no matter the licence itself was issued on a subsequent date, it must be deemed to have been issued on the date when the application had been filed and unless there was some disqualification that prevented the driver from obtaining such renewal. In every other case on a renewal, it shall be taken as a renewal from the date when it is made. If it had not been applied for within the statutorily prescribed period of 30 days, I have no proof before me that the renewal had been applied for within 30 days from the date of expiry of licence, namely, before 09.01.1991. The fact that a late renewal fee had been obtained from the driver cannot make the situation better for the driver or the owner to claim a right of indemnity. Consequently, the claim for full indemnity as sought by the owner-cum-driver cannot be countenanced. The appeal in FAO No. 959 of 1994 is allowed but as regards the entitlement for enforcement the claimant shall have the benefit against the Insurance Company in terms of the law laid down by the Supreme Court in *The New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, . The insurer shall in terms of the finding rendered above be entitled to recover the said sum from the owner and the driver. FAO No. 712 of 1994 is, consequently, dismissed.