

(1961) 04 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 2233 of 1960

Ruby General Insurance Co. Ltd.

APPELLANT

Vs

Misri Devi

RESPONDENT

Date of Decision : 07-04-1961

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1939 — Section 96

Citation : AIR 1962 P&H 522 : (1961) 2 ILR (P&H) 893

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Judgement

(1) This is a petition under Article 227 of the Constitution of India challenging the order of the Motor Accidents Claims Tribunal, Punjab, (hereinafter called the Tribunal) constituted under the Motor Vehicles Act, 1939 (hereinafter called the Act).

(2) It appears that on 26-4-1958 one Amir Singh was knocked down by a truck, received fatal injuries and died at the spot. This truck was owned by one Madan Gopal Mahajan, resident of Jullundur and it was insured with the petitioning Company, Ruby General Insurance Company Limited, Delhi (hereinafter called the Company) Smt. Misri Devi, widow of Amir Singh deceased, sent an application by post on 11-4-1959 to the Chairman of the Tribunal at Chandigarh, claiming Rs. 30,000/- as compensation. This application was received by the Tribunal on 14-4-1959. In the heading of this application, only the name of the Company was mentioned as a respondent not in column 8 of the same, the name of the owner as well as the Company was mentioned. No notice, however, was given to the owner of the vehicle by the Tribunal, though the same was issued to the Company.

(3) A written statement was filed on behalf of the Company, raising a number of please, which led to the framing of the following three preliminary issues-

1. Whether this Tribunal has no jurisdiction to try the application?

2. Is the claim within time?

3. Whether petition is maintainable as filed?

(4) The Tribunal by its order dated 29-6-1960 held that it had jurisdiction to try the application and the claim filed by the widow was within time. With regard to issue No. 3, the Tribunal held that the only defect in the application filed by the widow was that the name of the owner of the vehicle had not been given along with the Company as a respondent but that was not a material defect for which the applicant should be deprived of the relief. The Tribunal, therefore, held that the application was maintainable as filed and also issued notice to the owner. It also held that the Company could not raise the pleas which had given rise to these three issues and it could only raise those pleas which were covered by section 96 of the Act and on this ground also these three issues were decided against the Company. Against this decision, the Company has filed the present petition in this Court.

(5) Learned counsel for the petitioner has submitted that the order of the Tribunal deserves to be quashed on the short ground that it had been passed without first issuing notice to the owner of the vehicle, who was a necessary party to these proceedings. His submission was that the real respondent in the case was the owner and no application for damages by a third party was maintainable against the Company. He contended that by virtue of the provisions of section 96 of the Act a third party was entitled to maintain an application for damages against the insured, namely, the owner of the vehicle, and if a decree was obtained against him, the same could be executed against the Company, treating it as a judgment-debtor under the terms of section 96 of the Act.

(6) After hearing the learned counsel for the parties, I am of the view that there is merit in this contention. Section 96 of the Act lays down that it is the duty of the insurer Company to satisfy the judgments passed against the insured in respect of third party risks. By virtue of the provisions of sub-section (1) of this section, when a judgment has been made against the insured, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor in respect of the liability. By virtue of the provisions of sub-section (2) of this section, no sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment was given, the insurer had notice through the Court of the bringing of the proceedings and as insurer to whom notice of the bringing of any such proceedings was so given, shall be entitled to be made a party thereto and to defend the action on any of the grounds mentioned in that sub-section. Thus it would be clear that the third party has to bring an action for damages against, the owner of the vehicle and in order that the insurer, namely, the Company, should be liable for the decree passed against the owner, it is necessary that a notice of the bringing of the proceedings should, be given to the Company through the Court either before or

after the commencement of the proceedings in which the decree was passed and the Company shall thereupon be entitled to be made a party to those proceedings and to defend the action only on those grounds which are mentioned in that sub-section.

(7) It was frankly conceded by the learned counsel for the respondent that the owner of the vehicle was a necessary party to these proceedings. On the other hand it was conceded by the learned counsel for the petitioner that the Company could not raise the pleas which gave rise to issue 1 and 2 because they were not covered by the provisions of sub-section (2) of section 96 of the Act, though the same could be raised by the owner of the vehicle. In my opinion therefore, the Tribunal was wrong in dealing with this application and giving his findings without first issuing notice to the owner of the vehicle.

(8) In view of what I have said above, I would accept this petition, set aside the order of the Tribunal and direct that he should start proceedings afresh after issuing notice to the owner of the vehicle. In the circumstances of this case, however, I would leave the parties to bear their own costs in this Court.

(9) Order accordingly.