

(2002) 09 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 354 of 2000 and Cross Objection No. 51-CII of 2000

Smt. Jaswant Kaur

APPELLANT

Vs

Malkiat Kaur etc.

RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2003) 2 ACC 4 : (2003) 133 PLR 629 : (2003) 1 RCR(Civil) 393

Hon'ble Judges : N.K. Sud, J

Bench : Single Bench

Advocate : Ashit Malik and Ajit Atri, for the Appellant; G.S. Grewal, Senior Advocate and T.P.S. Mann, for Respondent Nos. 1 and 2 and A.P. Jagga, for the Respondent

Judgement

N.K. Sud, J.—This appeal has been filed by the owner of Truck No. PB-12-A-4706 against the award dated 4.1.2000 of the Motor Accident Claims Tribunal, Rupnagar (for short "the Tribunal") whereby it has fixed the liability to pay compensation on her on ground that the driver of the offending vehicle was not holding a valid licence. The grievance of the appellant is that the claim petition had been filed by the claimants in which Ranjit Singh was alleged to have been driving the offending truck and had been impleaded as respondent No. 1. On the pleadings of the parties, the Tribunal framed issue No. 1 as under:-

1. "Whether Ranjit Singh driver of truck No. PB-12-A-4706 while driving rashly and negligently caused the death of Baljinder Singh or driver of bus No. PB-12-8830? OPP"

2. While disposing of this issue, the Tribunal held that the vehicle in question was being driven by Inderjit Singh and not Ranjit Singh. The Tribunal thereafter also recorded a finding that Inderjit Singh was not holding a valid licence. It is on this basis that the Insurance Company was absolved and the liability to pay compensation was fixed on the owner-appellant.

3. I do not understand as to how under issue No. 1 as reproduced above, a finding could be recorded that it was Inderjit Singh and not Ranjit Singh who was driving the vehicle. The claimants had stated that Ranjit Singh was driving the vehicle and had not even impleaded Inderjit Singh a party in the claim petition. No issue was got framed by the respondent Insurance Company in this behalf. Counsel for the Insurance Company has also not been able to support the approach of the Tribunal in this behalf. Thus, I am of the view that this matter has to be remanded to the Tribunal for framing the following issue as an additional issue:-

"Whether truck No. PB-12-A-4706 was being driven by Ranjit Singh or by Inderjit Singh on 12.3.1995 when the accident had taken place?"

4. While disposing of this issue if the Tribunal comes to the conclusion that the offending truck was in fact being driven by Ranjit Singh, it shall also record a consequential finding whether he was holding a valid driving licence or not. The Tribunal shall submit its findings within six months from today.

5. However, irrespective of the fact as to who was driving the offending vehicle at the time of accident or whether the driver was holding a valid driving licence or not, the Insurance Company cannot be absolved of its liability to pay compensation to the claimants as held by the Apex Court in *New India Assurance Co. v. Kamla and Ors.* (2001)127 P.L.R. 830 (S.C.).

6. In this view of the matter, the Insurance Company-respondent No. 4 is directed to deposit the amount of compensation with the Tribunal within two months from today, for onward disbursement to the claimants. The appeal as well as the cross-objection shall be fixed for regular hearing after the receipt of the report from the Tribunal. The sum of Rs. 25,000/- deposited by the appellant in this Court shall be retained in this Court till the final decision in the appeal.