

(1989) 05 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 766 of 1987

Smt. Kailash Kumari and others

APPELLANT

Vs

Bhola and others

RESPONDENT

Date of Decision : 02-05-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Motor Vehicles Act, 1939 — Section 110, 92, 95, 96

Citation : AIR 1990 P&H 154 : (1990) 67 CompCas 9 : (1990) 2 ILR (P&H) 362

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : Harinder Singh Giani, for the Appellant; Avinash Chander Jain and S.K. Sharam, for the Respondent

Judgement

1. The claimants have come up in appeal against the award of the Motor Accident Claims Tribunal. Their only grievance is that the Tribunal erred in disallowing the claim against the Insurance company.

2. The learned Tribunal correctly found that the accident took place due to the rash and negligent driving of respondent No. 1. The deceased was Government servant and drawing monthly salary of Rs. 1750.20 paise at the time of his death. The Tribunal determined the dependency of the claimants and held that the deceased was contributing Rs. 1170/- per month for the maintenance of; his dependents. The deceased was aged 46 years on the date of his death. The Tribunal applied the multiplier of "16" and found that the claimants are entitled to Rs. 2,24,640/- by way of compensation. This amount was ordered to be paid with interest by respondent Nos. 1 and 2.

3. The learned Tribunal found that the deceased was being carried in a private car as a gratuitous passenger and the insurance company is not liable to pay the compensation. The view taken by the learned Tribunal is unsustainable by law. The Tariff Advisory Committee, by their instructions dated March 13, 1978 had given directions to the insurance companies in regard to liability of insurance

company in respect of the passengers carried in a private car. It was directed by the Committee that all existing policies should be deemed to incorporate this amendment in the insurance policies, which is to the following effect :--

"Death or bodily injury to any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward."

These instructions have the statutory force. The insurance company is now an instrumentality of the State which is bound by the statutory directions of the Tariff Advisory Committee. Apart from this, Section II of the Insurance Policy Exhibit R1 deals with liability to third parties. Clause (1) of Section II is in the following terms:--

"1. The company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of-

(a) death of or bodily injury to any person including occupants carried in the Motor Car provided that such occupants are not carried for hire or reward but except so far as is necessary to meet the requirements of S. 95 of the Motor Vehicles Act, 1939 the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.

(b) damage to property belonging to the insured or held in trust by or in the Custody or control of the insured".

A bare reading of this clause makes it obvious that passenger's liability is also covered. The submission that the policy does not cover passenger's liability is without substance. An identical matter came up for consideration before the Karnataka High Court in *The New India Assurance Co. Ltd. Vs. H. Siddalinga Naika and Others*,). The Bench relying upon its earlier judgment held thus:-- (at Pp. 230-31 of AIR)

"This Court had occasion to deal with a similar clause and interpret the same, in *Indian Mercantile Insurance v. Gowramma* ILR (1979) Kant 887. Interpreting similar clause in the policy, this Court has held by a Division Bench of which one of us was a party, that the clause includes passenger liability also. Hence, there is no substance in the contention raised before us that the policy does not cover passenger liability in the jeep".

4. Learned counsel for the respondents placed reliance on *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*,), in support of the proposition that the insurance company is not liable when the passenger is carried without hire or reward. This judgment does not render any assistance to the learned counsel. The decision of the apex Court makes it clear that although there is no statutory liability of the insurance company to pay compensation to a passenger, a contract of insurance can provide otherwise. The instructions of the Tariff Advisory Committee which is a statutory body will be

deemed to have been incorporated in every contract of insurance. Even if it is not expressly mentioned in the contract by the deeming provisions, the Court will so read it in the insurance policy that the directions given by the Tariff Advisory Committee were incorporated in the insurance policy. After reading the directions in the insurance policy, the Court will give effect to it. The judgment of the Supreme Court was rendered on the same date, when the instructions of the Tariff Advisory Committee came into force. Moreover, in the Supreme Court case, the accident had taken place on 18-12-1960 prior to the issuance of the directions of the said Committee.

5. After issuance of the instructions of the Tariff Advisory Committee, the insurance Company cannot avoid liability. The owner of the vehicle can legitimately say that under the policy, the insurance company was bound to pay to the claimants for the death of the passenger. The insurance company has not let any evidence on record that its liability is limited. In the absence of any evidence, it has to be held that the liability of the insurance company is unlimited.

6. For the aforesaid reasons, this appeal is allowed with costs. The award of the learned Motor Accidents Claims Tribunal is modified and it is ordered that the amount of compensation with interest will be payable jointly and severally by respondents Nos. 1, 2 and 5. Counsel's fee is assessed at Rs. 1000/-.

7. Appeal allowed.