
(1981) 08 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 239 of 1973

Smt. Tarawanti and Others

APPELLANT

Vs

Gurmel Singh and Others

RESPONDENT

Date of Decision : 13-08-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1983) 54 CompCas 269

Hon'ble Judges : S.S. Sandhawalia, C.J;M.R. Sharma, J;J.V. Gupta, J;Goyal, J

Bench : Full Bench

Advocate : Maharaj Baksh Singh and T.S. Gujral, for the Appellant; L.M. Suri and R.M. Suri, for the Respondent

Judgement

M.R. Sharma, J.

1. The deceased was travelling in a car insured with the respondent-company, which struck into a standing car. The petitioner filed a claim petition which was dismissed against the insurance company by the learned Tribunal on the ground that the insurance company was not liable. The learned counsel for the claimants has challenged the correctness of the view taken by the learned Tribunal on the ground that in the case of a comprehensive policy, if the passengers travelling in the insured car die as a result of an accident, their dependants are entitled to claim compensation. In support of this view reliance is placed on a judgment rendered by D.K. Mahajan J. and reported as Unique Motor & Genl. Insurance Co. Ltd. v. Krishna Kishori [1968] ACJ 318).

2. Mr. Suri, the learned counsel for the insurance company, disputes the correctness of the view taken in this case. According to him, even in the case of a comprehensive policy of insurance, the insurance company is liable to pay only those amounts the liability for payment of which arises under the provisions of the Motor Vehicles Act.

3. The question of law canvassed at the bar is not free from difficulty. It looks

proper that it should be decided by a larger Bench. I, therefore, recommend that this case be put up before my Lord the Chief Justice to constitute a larger Bench.

J.V. Gupta, J.

4. A common question of law has been referred by the learned single judge in this First Appeal from Order Nos. 239 of 1973 and 226 of 1974, and the same will be answered hereunder.

5. The question of law referred for decision by a larger Bench is, whether in the case of a comprehensive policy of insurance, the insurance company is liable to pay only those amounts the liability for which arises under the provisions of the Motor Vehicles Act or it also includes the passengers in a private car who meet with an accident.

6. The learned single judge has relied on a judgment of D.K. Mahajan J. (as his Lordship then was), reported as *Unique Motor & Genl. Insurance Co. Ltd. v. Mrs. Krishna Kishori* [1968] ACJ 318 (P & H), while making the reference, but now the question referred to above stands fully answered by the Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, , para. 20 thereof, which fully answers the questions, is reproduced hereunder (p. 1746):

"Sections 95(a) and 95(b)(i) of the Motor Vehicles Act adopted the provisions of the English Road Traffic Act, 1960, and excluded the liability of the insurance company regarding the risk to the passengers. Section 95 provides that a policy of insurance must be a policy which insures the persons against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The plea that the words "third party" are wide enough to cover all persons except the person and the insurer is negated as the insurance covers not available to the passengers made clear by the proviso to the sub-section which provides that a policy shall not be required:

" (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises."

7. Therefore it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As u/s 95, the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured, the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

8. While so holding, it has been further made clear by their Lordships of the Supreme Court that the insurer can always take policies covering risks which are

not covered by the requirements of Section 95, and whether in a given case the particular policy covers the said risk or not, will be a question of fact in each case to be decided on the terms of the policy.

9. Subsequently, the Full Bench of the Gujarat High Court in *Ambaben v. Usmanbhai Amirmiya Sheikh* [1978] 19 GLR 913, following the said Supreme Court judgment, has also held that in all cases where the policy of insurance covers the risk u/s 95 of the Act or what is usually known as Act policy, the risk to the passengers who are not carried for hire or reward would not be covered and the insurer will not be liable for death or bodily injury to passengers who are not carried either for hire or reward.

Mahajan, J.

10. In *Unique Motor's case* [1968] ACJ 318 (P & H), has observed after construing the insurance policy in that case that the relevant clause therein excludes a passenger on the vehicle itself but "the position will be different if the injury has to be indemnified by the insurer as in the case of a comprehensive insurance policy." These observations cannot now be said to be laying down a good law in view of the judgment of the Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, . Moreover, these observations were not necessary for the decision of that case and were in the nature of a mere obiter dictum.

11. Following the binding precedent, the reference is answered to the effect that in the case of a comprehensive policy of insurance, the insurance company, is not liable to pay compensation for the bodily injuries or death, etc., caused to the passengers in a private car unless the policy specifically covers that risk.

12. With this answer the case is sent back for decision by a Single Bench, which will also go into the terms of the policy for the just decision of the case.

S.S. Sandhawalia, C.J.

13. I agree.

SP. Goyal, J.

14. This is an appeal by the claimants against the judgment and award of the Motor Accidents Claims Tribunal, Ludhiana, dated September 19, 1973. As there is no appeal by the judgment-debtors and the dispute now relates only to the quantum of compensation, I need not discuss the circumstances under which the accident took place.

15. As regards the compensation, from the statement of the employer of the deceased which remains uncontradicted, the deceased at the time of his death was getting Rs. 150 per month as pay apart from free boarding and lodging. The claimant, widow of the deceased, deposed that she was getting Rs. 150 from the deceased for the maintenance of the family. But it is difficult to believe that the deceased was not spending anything on himself because of free boarding and

lodging. The minimum one can think is that the deceased might be spending Rs. 25 per month on himself and making available Rs. 125 for the family. Thus calculated, the annual loss to the family would come to Rs. 1,500 per annum. The deceased at the time of the accident was 37 years old and he left behind two minor children and a widow. Looking at the young age of the deceased and the future prospects of his life, I feel that fifteen would be a proper multiplier to arrive at a fair compensation to the widow and the dependants. The impugned award is consequently modified and the compensation payable to the appellants is assessed at Rs. 22,500 which they shall be entitled to recover from respondents Nos. 1 and 2 together with interest at the rate of 10 per cent, per annum from the date of the application till its realization. As there is no opposition by the respondents, I make no order as to costs.