

(1983) 10 P&H CK 0068
In the Punjab And Haryana At Chandigarh

Sucha Singh and Another	Vs	APPELLANT
Sehta Ram and Others		RESPONDENT

Date of Decision : 14-10-1983

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1984) 1 ACC 168 : (1984) ACJ 586

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

S.S. Sodhi, J.—The controversy raised inf appeal is with regard to the liability of the Insurance Company for the amount awarded as compensation to the claimants.

2. The facts relevant to this matter are that there was an accident between a truck and a Railway Engine at an unmanned railway crossing near Panipat. Two persons travelling in the truck were killed, they being Devi Singh and Pali Ram while two others were injured. This happened on May 26, 1980 at about 7-30 P.M. The truck involved in the accident was DLL 8370.

3. Two separate claims for compensation were filed, one by widow and parents of Devi Singh deceased and the other by the father, widow and children of Pali Ram deceased.

4. It was the finding of the Tribunal that the accident resulted from the fault and negligence of the truck driver and consequently, the claimants were held to be entitled to and awarded compensation to the extent claimed i.e. Rs. 40,000/- in each case. The driver and owner of the truck were held liable for payment of the amount awarded but not the Insurance Company with which the truck had been insured, as the Tribunal found that the deceased were not in the truck by reason of or in pursuance of a contract of employment. It is this finding that was questioned in appeal.

5. In dealing with this matter, it would be relevant to note that u/s 95 of the

Motor Vehicles Act, a policy of insurance is not required to cover liability in respect of injuries to persons being carried in a motor vehicle "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."

6. The expression "contract of employment" here came up for consideration before the Full Bench of this Court in *Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur and Ors.* 1967 A.C.J. 158 where it was observed that it refers not only to a contract of employment with the insurer but also to a contract of employment of a person who is on the insured vehicle for specific or business reasons and had taken a contract of employment in pursuance of which he was on the vehicle. He need not be under a contract of employment with the insured so long as he was on the insured vehicle by reason of or in pursuance of his contract of employment. In other words, because of his contract of employment he was on the vehicle.

7. The legal position thus being as set out above, the question which now falls for determination is whether from the material on record it stands established that the deceased were travelling in the truck in pursuance of or under a contract of employment. It is here that dents appear in the case of the truck owner which was so vehemently canvassed by his counsel Mr. L.M. Suri.

8. A reference to the claim applications filed by the claimants in both these cases would show that the remark recorded against the column "Name and Address of the employer of the deceased, if any" was "nil". The occupation of the deceased was described as "working as contractor for loading and unloading Onions and of Making Tibbies for the Commission Agents of Onions, and of doing labour during the rest of the year". In paragraph 24 of the claim application in giving the cause of accident, it was merely stated that the deceased had gone for loading the Onions. It is pertinent to note that there was no mention that this was under any contract of employment. Looking now at the written statement filed by the truck owner, both the paragraphs 4 and 5 of the claim application which deal with the occupation of the deceased and the name and address of their employer if any, were both denied for want of knowledge, and in reply to para 24 it was stated that names and particulars of the deceased were not known.

9. In the written statement filed by the Respondent-Insurance Company, an additional plea was raised to the effect that the deceased boarding the truck was an personal act of the driver, not one done in the course of his employment. What deserves not is that despite this plea, there was no mention in the pleadings nor indeed is there any evidence on record to establish that the deceased were on the truck by reason of or in pursuance of any contract of employment. P.W. 1 Suraj Bhan whose onions were being carried on the truck merely deposed that he used to pay the deceased at the rate of 50 paise per bag but this can by no means be taken to mean that the deceased were on the truck under any contract of employment. Similarly, the mere mention of the deceased by the respondent-truck driver as "labourers" also cannot lead to and such

conclusion. In this state of the evidence, it cannot be held that the deceased were on the truck under any contract of employment and the impugned order of the Tribunal absolving the respondent Insurance Company from liability thus warrants no interference in appeal.

10. In the cross-objections filed by the claimants the only relief claimed was with regard to interest on the amount awarded. It was stated in this behalf that no amount had so far been paid to the claimants as compensation. In the circumstances, this claim indeed deserves acceptance. The claimants are accordingly hereby awarded interest on the compensation awarded at the rate of 12% per annum from the date of the application to the date of payment thereof.

11. In the result, the appeal is hereby dismissed while the cross-objections are accepted. In the circumstances, however, there will be no order as to costs.