
(1985) 10 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 217 of 1982

Surinder Kumar Jain

APPELLANT

Vs

Smt. Sukh Dai and Others

RESPONDENT

Date of Decision : 24-10-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(1), 95(2)

Citation : (1986) ACJ 848 : (1986) 60 CompCas 650 : (1986) 2 ILR (P&H) 269

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

Bench : Single Bench

Advocate : Arun Jain, for the Appellant; C.B. Goel and L.M. Jindal for respondents Nos. 1 to 3 and G.S. Chawla, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The controversy in appeal here is with regard to the extent of the liability of the insurance company. The point in issue being--whether in a claim for compensation u/s 110 of the Motor Vehicles Act, 1939 (hereinafter referred to as " the Act "), arising out of the death of a workman, the liability of the insurance company is limited to the amount payable under the Workmen's Compensation Act, 1923.

2. The facts relevant to this matter are that on January 27, 1980, at about 5 a.m. the truck HRC 5443, suddenly went off the road and hit a tree. This happened near village Bhangola in District Faridabad. Maim Singh, who was employed as a labourer on this truck, sustained serious injuries in this accident, as a result of which he later died. It was the finding of the Tribunal that the accident had been caused due to the rash and negligent driving of the truck-driver. A sum of Rs. 40,000 was awarded as compensation to the claimants, they being the mother, widow and minor son of Maim Singh, deceased. The liability of the insurance company was fixed at Rs. 18,000, this being the amount payable under the Workmen's Compensation Act, 1923, and for the balance the truck-owner and driver were held to be jointly and severally liable.

3. There is a conflict of judicial opinion on whether the liability of the insurance company is so limited. This arises mainly from the interpretation of proviso (i) to Section 95(1)(b) of the Act, which reads as under:

" Provided that a policy shall not be required--

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employees of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee."

4. This has to be read with Section 95(2)(a) which is in the following terms :

"(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :--

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, "or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle.; "

The basic authority for the proposition that the liability of the insurance company is limited to the amount payable under the Workmen's Compensation Act, 1923, is the judgment of the single judge of the High Court of Madras in Venkataraman v. Abdul Munaf Sahib [1971] ACJ 77. This was followed in General Assurance Society Ltd. v. Jayalakshmi Ammal [1975] ACJ 159. It was later also followed by the High Court of Orissa in Orissa Co-operative Insurance Society Ltd. v. Sarat Chandra Cham-pati [1975] ACJ 196 (Orissa) and Subasini Panda v. State of Orissa [1984] ACJ 276 ; [1986] 60 Comp Cas 124 Ori. A similar view was taken by the High Court of Andhra Pradesh in New India Assurance Co. Ltd. v. Kamparaju Sunkamma [1981] ACJ 441 (AP).

5. The contrary view finds its expression in the judgment of the Division Bench of the High Court of Allahabad in Oriental Fire and General Insurance Co. Ltd. v. Ram Sunder Dubey [1982] ACJ 365 where it was observed that there was nothing in the Act to show that while awarding compensation to an employee, the Tribunal was bound to apply the Schedules framed under the Workmen's Compensation Act, 1923, for determination of the compensation payable. It was further observed that the words in Section 95(2)(a) of the Act, "a limit of one lakh and fifty thousand rupees in all, including, the liabilities, if any, arising under the Workmen's Compensation Act, 1923", indicate that the provision was inclusive, that is, it provided for the liability of the insurance company both under the Motor Vehicles Act, 1939, as also under the Workmen's Compensation Act, 1923. It was observed in this behalf that if the words "if any arising under the

Workmen's Compensation Act, 1923" had not been in this section, it would be open to the insurance company to urge that its liability was limited to that under the Motor Vehicles Act, 1939, only and did not extend to the Workmen's Compensation Act, 1923.

6. Later, a Division Bench of the High Court of Bombay in *National Insurance Co. Ltd. v. Gondi Eliza David* [1984] ACJ 8; *National Insurance Co. Ltd. Vs. Gonti Eliza David and others*, also held to the same effect, namely, that the words " the liability, if any, arising under the Workmen's Compensation Act, 1923 " occurring in Clause (a) of Sub-section (2) of Section 95 of the Act, implied that the insurer was liable for common law damages also and not only in respect of the liabilities arising under the Workmen's Compensation Act, 1923.

7. A reading of the provisions in Section 95 of the Act would show that there is no provision contained therein which can be read to limit the liability of the insurance company to that payable under the Workmen's Compensation Act, 1923. The reference to the liability "of the insurance company under the Workmen's Compensation Act, 1923, in proviso (i) to Section 95(1)(b) of the Act is merely to indicate the existence of the liability of the insurance company under that Act, but not the extent thereof. The limit of liability of the insurance company is prescribed u/s 95 (2)(a) of the Act, which was rightly construed by the Division Benches of the High Courts of Allahabad and Bombay as inclusive of liability both under the Motor Vehicles Act, 1939, as also under the Workmen's Compensation Act, 1923. Respectfully agreeing with this view, the conclusion is inescapable that in the present case, the liability of the insurance company must extend to the entire amount awarded. In other words, the truck-owner, driver as also the insurance company are jointly and severally liable for the compensation awarded to the claimants.

8. This appeal is accordingly hereby accepted with costs. Counsel fee Rs. 300.