
(1994) 03 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 806 of 1984

The New India Assurance Co. Ltd.

APPELLANT

Vs

Shri Kailash Nath Bhatnagar and Others

RESPONDENT

Date of Decision : 30-03-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1995) 2 ACC 376 : (1995) ACJ 323 : (1994) 107 PLR 306

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant; B.S. Dhillon, N.K. Khosla and Ajay Lamba, for the Respondent

Final Decision : Dismissed

Judgement

Amarjeet Chaudhary, J.—The Motor Accidents Claims Tribunal, Gurgaon, on a claim petition filed by Kailash Nath Bhatnagar, had awarded a sum of Rs. 16,000/- to him by way of compensation for the injuries sustained by him. The Tribunal had fastened the liability to pay compensation on the Insurance Company and the owner of the Truck.

2. The appellant has challenged the award primarily on the ground that the liability to pay compensation has been wrongly fastened on the Insurance Company. The counsel has contended that Truck No. DHG-2022 was being driven by Bhim Singh who was merely a cleaner of the Truck in question. The truck was not being driven by a licensed person and as such no liability could be fastened on the Insurance Company. The counsel in support of his contention has relied upon Brij Lal Khera v. Raksha Devi 1972 ACJ 69, wherein it is held that when a vehicle is driven by a person who is not duly licensed, Insurance Company is not liable to pay compensation.

3. In New India Assurance Co. Ltd. Vs. Surinder Paul and Others, , the Insurance Company pleaded that the driver had no driving licence as the same was not

produced by the driver either at the time of filing of the written statement or at the time when his evidence was recorded or even at any subsequent stage and it was held that Insurance Company was not liable.

4. In *D. Narayanaswami Vs. Suresh Gupta and others*, , it was held that if the vehicle at the time of the accident was being driven by somebody other than the licensed driver, the Insurance Company was not liable to pay compensation.

5. In the instant case the case of the owner of the vehicle is that he had employed one Shri Amir alias Phakkar as authorised driver of truck No. DHG-2022 who had gone to his house nearby for taking meals on the fateful day and some unauthorised person had caused the accident and as such he could not be held liable to pay compensation. The Tribunal also returned a finding that Bhim Singh was employed as Cleaner at the time of accident and it was he who had caused the accident. The Tribunal also observed that Amir alias Phakkar was the authorised driver of the offending truck and he had not locked the same as required of him or at any rate he had left the ignition key of the truck in the truck or had given the same to Bhim Singh and the truck could not be driven without its key as was admitted by Amir alias Phakkar in his cross-examination. The Tribunal also held that Amir alias Phakkar had contributed to and had facilitated the happening of the accident on account of his negligence as he had not taken away the ignition key within him before leaving for his home for taking meals. On the given findings of the Tribunal and observations, I am of the considered view that the matter is squarely covered by the ratio of the decision in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors.* (1987) 91 PLR 605 in which case the Insurance Company was held liable to pay compensation. In that case also the driver had left the vehicle running with the ignition key in the ignition lock and had handed over the control of the truck to an unlicensed Cleaner, who caused the accident.

6. As regards the authorities referred to by the learned counsel for the appellant, suffice it to say that these are not applicable to the facts of the present case.

7. For the reasons aforesaid, no case for interference with the well reasoned award of the Motor Accidents Claims Tribunal, is made out. The appeal is consequently dismissed without any order as to costs.