(2000) 11 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 53 of 1995

The New India Assurance Company Limited — APPELLANT

Vs

Vidya Devi and others — RESPONDENT

Date of Decision : 23-11-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(46)

Citation : (2001) 2 ACC 266 : (2001) ACJ 1881 : (2001) 4 RCR(Civil) 46

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This F.A.O. has been directed against the award dated 15.9.1994, passed by the learned Motor Accident Claims Tribunal, Ambala, which allowed the claim petition and claimants were awarded a sum of Rs. 1,95,000/-which was to be distributed to the claimants as per para No. 12 of the award itself which runs as follows:

For the reasons and findings recorded on the above issues I accept this claim petition with costs and award a sum of Rs. 1,95,000/- to the Petitioners in equal shares in lieu of compensation for the death of deceased Rishal Singh which shall be payable by Respondents No. 1 to 3 jointly and severally with interest at the rate of 12% per annum from the date of institution of the petition till realization of the entire amount of compensation. Counsel fee is fixed at Rs. 500/-. However in view of the directions of the Hon''ble Supreme Court contained in judgment dated 6.1.1993 in SLP (Civil) No. 9583 of 1992 titled as General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, the entire amount payable to the Petitioners shall be deposited in long term fixed deposit/initially at least for a period of five years in any of the nationalised bank but the amount of interest accrued on the amount of the share of Petitioner No. 1 Smt. Vidya Devi shall be paid to her every month by the bank concerned. However, the amount of the shares of the minor Petitioners No. 2 to 5 shall remain deposited till they attain the age of majority and the amount of interest accrued on the amount of their share shall not be paid without the order of the Court. In no case the amount of fixed deposit shall be released before five years without the permission of the Court. It is further directed that the bank shall not create any encumbrance on the fixed deposit amount. Memo of costs be prepared and file be consigned to the record room.

2. Some facts can be noticed in the following manner. On 5.3.1993, deceased Rishal Singh along with Petitioner Smt. Vidya Devi and Bablu was going to Pinjore from Ram-pur Sipuri on a tractor trolley No. HP-17-3541. The trolley was loaded with sand and the tractor was being driven by Shri Sher Singh, Respondent. The deceased was sitting on the mudguard of the tractor, whereas, Smt. Vidya Devi and Bablu were sitting in the trolley loaded with sand. Respondent, Sher Singh, was driving the tractor-trolley rashly and negligently and at a very high speed and as a result of which the deceased fell down from the mudguard of the tractor and was run over by the wheel of the tractor. The deceased was taken to civil Hospital Pinjore where he was declared dead. It is the further case of the claimants that the deceased was aged about 40 years. He was a labourer and was earning Rs. 1500/- per month, Petitioner No. 2 is the widow. Petitioner No. 1 to 5 are the minor sons and daughters of the deceased and they were dependents on the income of the deceased. With this broad allegations the Petitioners claimed compensation to the tune of rupees five lacs.

3. Notice of the claim petition was given to the Respondents. The driver of the tractor did not appear in the trial Court. He was proceeded ex parte. Respondent No. 2 Shri Ji-wna Ram the owner of the tractor. He filed the written-statement and denied the allegations. According to him, his driver refused to accommodate the deceased to board the tractor but the deceased insisted and when the tractor had just started the deceased jumped on the tractor to sit on the mudguard and fell down and thus he was crushed. The accident did not take place on account of the negligence of Respondent No. 1.

4. Respondent No. 3 Insurance Company also filed a written statement and denied its liability. According to the Insurance Company the deceased was travelling as a gratuitous passenger on the tractor and therefore, such like risk was not covered under the insurance policy. No accident took place in the manner as alleged.

5. The Tribunal framed the following issues:

1. Whether the accident was caused by the Respondent No. 1 Sher Singh while driving the tractor No. HP-17/3541 resulting into the death of Rishal Singh alias Risala, as alleged? OPP

2. If issue No. 1 is proved, whether the Petitioners are entitled to any compensation amount, if so how much and from whom? OPP

3. Whether the tractor was being driven without any driving licence in

contravention of the insurance policy, if so to what effect? OPR

4. Whether the claim petition is not maintainable in view of the preliminary objections raised in the written-statement? OPR

5. Relief.

6. The parties were given the opportunities to lead the evidence and on the conclusion of the proceedings it was observed by the Tribunal that the death of Shri Rishal Singh had taken place due to the negligence of Respondent No. 1. Resultantly, issue No. I was decided in favour of the claimants. Issue No. 2 was also decided in favour of the claimants partly and it was held that claimants are entitled to compensation to the tune of Rs. 1,95,000/-. Issue No. 3 was decided against Respondents. Issues No. 3 and 4 were decided against the Respondents and finally claim petition was partly allowed as stated above in the earlier portion of this judgment.

7. Aggrieved by the award the present appeal has been filed.

9. I have heard Shri L.M. Suri, Sr. Advocate, appearing on behalf of the Appellant-Insurance Company, Shri S.S. Virk, advocate, appearing on behalf of Respondents No. I to 5 and Shri Narotam Kaushal, Advocate appearing on behalf of Respondent No. 7 the owner of the tractor and with their assistance have gone through the record of this case.

10. The only submission raised by the learned Counsel for the Appellant is that the deceased was travelling on a tractor, which is a vehicle for the purpose of agriculture and the deceased was travelling as a gratuitous passenger and in these circumstances, there is no liability of the Insurance Company.

On the contrary, learned Counsel appearing on behalf of the Respondents submits that there is no force in the contention raised by the counsel for the Appellant in view of the settled law which 1 will refer to the latter portion of the judgment but at this juncture I can only say that this appeal is totally devoid of any merit as there is no force in the ground of appeal as well as the submissions raised by the counsel for the Appellant.

11. The first point for determination before me is whether a tractor fitted with trolley, can be termed as a motor vehicle or not. This point came up for consideration before this High Court in The United India Insurance Co. Ltd. Vs. Sh. Pritpal Singh, and the Hon''ble D.B., was pleased to hold by interpreting the provisions of Section 2, Sub-Section 46 of the Motor Vehicle Act, that when a tractor is fitted with a trailer/trolley, it is a motor vehicle. In para No. 6 of the said judgment it has been stated as follows:

Definition of "Motor Vehicle" or "vehicle" is comprehensive so as to include any mechanically propelled vehicle adapted for use upon road irrespective of the source of power and includes a trailer. "Trailer" has been defined separately but is also included in the definition of the "Motor vehicle"/"Vehicle" Therefore, even though trailer may be drawn by a motor vehicle, it by itself is a motor vehicle and both the tractor and trailer taken together would constitute a transport vehicle if the trailer/trolley is not driven by a tractor, it does not become a vehicle and does not have any independent identity. The very fact that the trailer has been included within the definition of "Motor Vehicle" clearly shows that the legislature did not intend to exclude a tractor together with a trailer/trolley from the definition of the motor vehicle and in our opinion, the findings recorded by the Tribunal about the liability of the Appellant do not suffer from any illegality.

12. Support can also be taken from Poonam Singh Vs. Kamla and Others, .

13. The second point for determination would be what was the status of the deceased Shri Rishal Singh when he was travelling on the tractor by sitting on its mudguard. 1 have just stated above that the stand taken up by the Insurance Company was whether Rishal Singh deceased was a gratuitous passenger, if so, whether the Insurance Company is liable under the third party insurance.

14. This point has now been considered by the Hon''ble Supreme Court in case New India Assurance Company Vs. Shri Satpal Singh and Others, and the Hon''ble Supreme Court in para No. 11 of the cited judgment held as follows:"Under the Act an Issuance Policy Covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis the gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the New Act came into force".

15. Thus, with the enforcement of the New Act, the Insurance Company cannot escape from the liability.

16. Faced with this difficulty, the learned Counsel for the Appellant referred to a order dated 10.12.1999 passed in FAO No. 1187 of 1998 and submits that the point as to "whether in an accident in which the death or an injury to a passenger being carried on a tractor is caused, the claimants can or cannot claim compensation under the provisions of the Act from the driver and the owner of the tractor" has been referred to the larger Bench.

17. This point has already been answered by the Hon''ble Division Bench of this Court as well as by the Hon''ble Supreme Court. Apart from this, the Hon''ble Supreme Court has also made an observation in Satpal''s case (supra) that the type or class of vehicle will not make any difference. I have already stated above that the tractor when fitted with trolley/trailer is a motor vehicle, as held by the Hon''ble Division Bench of this Court. Therefore, the Insurance Company cannot escape its liability under the Insurance cover.

18. The compensation which has been awarded to the claimants cannot be held to be excessive. Rather it is a just compensation.

19. In this view of the matter I do not see any merit in this appeal and dismiss

the same. No order as to costs. The compensation alongwith interest, as awarded by the Tribunal, shall be distributed as per para No. 12 of its award. It will be open to the claimants to make an application for the disbursement of the amount on the ground of necessity. Dasti.