

(2005) 08 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 1079 of 1997

The New India Assurance Company Ltd.

APPELLANT

Vs

Shanti Devi and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2006) 3 ACC 442 : (2006) ACJ 1501 : (2006) 142 PLR 313 : (2006) 1 RCR(Civil) 664

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant;

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The New India Assurance Company Ltd. has filed the present appeal against the judgment of Motor Accident Claims Tribunal, Sangrur dated 3.4.1997, by which a compensation of Rs.1,44,000/- alongwith 12% interest per annum was awarded in favour of the respondent-claimants on account of death of Lachhman who died in a motor accident.

2. Briefly, the facts of the case are that on 8.7.1992 at about 6.10 p.m. Lachhman alongwith other members of a marriage party were coming from Ludhiana in a truck bearing No.PJP-7097. It is averred that the truck was being driven by Baldev Singh at a very high speed in a rash and negligent manner and when it reached village Uppli it hit Car No.PRN-9110 and thereafter, it struck against the tree and turned turtle and the members of the marriage party who were travelling in the truck received injuries, however, Lachhman, who was taken to Rajindra Hospital, Patiala died on reaching the hospital. The claimants who are the widow and two minor children of Lachhman filed a claim petition claiming a sum of Rs.5 lacs on account of death of Lachhman. It was averred in the claim petition that the deceased was earning a sum of Rs.3,000/- per month, therefore, the claimants are entitled to a total compensation of Rs.5 lacs. Written

statement was filed by the insurance company, wherein, the alleged accident was denied for want of knowledge and further that the deceased being a passenger in a goods carrier, therefore, the insurance company is not liable to indemnify the insured. It was further submitted that the driver of the truck Baldev Singh was not holding a valid driving licence.

3. The Tribunal held that the accident took place because of rash and negligent driving of Baldev Singh and after determining the income of the deceased to be Rs.1500/-, applied a multiplier of 12 and awarded a total compensation of Rs.1,44,000/-.

4. It has been argued by the counsel for the insurance company that as Lachhman was travelling as a passenger in a truck, therefore, the insurance policy did not cover the use of the vehicle for carrying passengers. It was submitted that only goods could be carried in the truck and not passengers, even if the passengers had paid any amount to the truck driver or owner. In the present case, although the deceased was travelling in a goods vehicle, which was hired for carrying a marriage party, however, insurance company has not produced any permit to show that deceased was a gratuitous passenger. In *United India Insurance Co. Ltd. Vs. Ramanbhai Kachrabhai Raval and Others*, it has been held that when a goods carrier was carrying a marriage party at the time of accident and the insurance company fails to produce either the permit or any copy thereof, the insurance company is liable to indemnify the insured.

5. In the present case, the insurance company has failed to prove that Lachhman was a gratuitous passenger, therefore, it has rightly been held liable to indemnify the insured. It was next argued by the counsel for the insurance company that driver of the offending truck did not have a valid driving licence. The mere fact that the licence possessed by the driver was fake or invalid cannot absolve the insurance company from its liability to indemnify the insured. It is held in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, that:-

(iii) The breach of the policy conditions, e.g. disqualification of driver or invalid driving license of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere, absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time.

6. This view has been taken by the Hon'ble Supreme Court of India in *United India Insurance Co. Ltd. v. Lehu and Ors.* (2003) 134 P.L.R. 124.

7. Thus, the insurance company cannot be absolved of its liability to indemnify the insured on account of an invalid or fake driving licence because the insurance

company has not led any evidence to prove that the insured was guilty of any negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver.

In view of the aforementioned judgments, the insurance company is liable to indemnify the insured. Resultantly, I find no merit in the present appeal and the same is dismissed.