

(1993) 01 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 861 of 1981

The New Indian Assurance Co. Ltd., Guragon

APPELLANT

Vs

Raghbar Dayal and others

RESPONDENT

Date of Decision : 07-01-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 92

Citation : (1993) ACJ 1236 : AIR 1993 P&H 146

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : L.M. Suri and Deepak Suri, for the Appellant;

Judgement

1. This is an appeal by the insurer against the award of the Motor Accident Claims Tribunal, Gurgaon, challenging its liability to pay the amount awarded as compensation to the claimants.

2. The undisputed facts as found by the Tribunal are that truck No. LHL 4499 was being driven by Karim Khan rashly and negligently on Ferozepur Jhirka Tijara road when window of the truck suddenly opened and passengers including the son of the claimants fell down, received injuries and died. This happened on March 22, 1903. The deceased was an unmarried young man of 19 years and his parents then filed a claim petition under S. 110-A of the Motor Vehicles Act, 1939 (hereinafter called "the Act") claiming a sum of Rs. 40,000/- as compensation from Satya Paul Singh, owner of the truck, Karim Khan, its driver and the New India Assurance Co. Ltd., with which the defaulting vehicle stood insured. When the case came up for the framing of issues, counsel appearing for the claimants made a statement limiting the claim only to the tune of Rs. 15,000/- equal to "the no fault liability" under S. 92-A of the Act.

3. On examination of the records and after hearing counsel for the parties, the Tribunal found that the claimants were entitled to a sum of Rs. 15,000/- as compensation being the heirs of the deceased. It was held that after the

introduction of S. 92-A, of the Act, the owner of the offending vehicle was liable to pay a sum of Rs. 15,000/- as compensation and since the vehicle stood insured with the New India Assurance Co. Ltd., appellant herein, the Tribunal found that the liability of the insurer was coextensive with that of the insured. Accordingly, a sum of Rs. 15,000/- was awarded as compensation to the claimants against the owner as well as the insurer and their liability to pay the amount was held to be joint and several. The claimants were also held entitled to interest at the rate of 6 per cent per annum on the awarded amount from the date of the claim petition till its realisation. It is this award which has been impugned in the present appeal.

4. The only argument advanced on behalf of the appellant is that since the deceased was travelling in a truck which was a Goods Carrier and that there was no averment that the deceased was travelling in the goods vehicle by reason of or in pursuance of any contention of employment the insurance company was not liable to pay the amount as the risk was neither covered nor it was required to be covered under the law. I find merit in this connection. It cannot be disputed that under S. 95 of the Act, a policy of insurance is not required to cover liability in respect of the death of or injuries to a person 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." It has been held by a Full Bench of this court in *Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others*,) that the insurance company is not liable to satisfy the award in terms of S. 96(1) of the Act where the deceased was travelling in a truck otherwise than under any contract of employment. The expression contract of employment was held to refer not only to a contract of employment with the insured 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 necessarily 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, it was under some contract of employment that he was on the vehicle when the accident took place.

5. In the instant case, it is not the case of the claimants that the deceased was travelling in the truck in pursuance of or under any contract of employment; In these circumstances, it must be held that the insurer was not liable to satisfy the award and the liability | was that of the owner alone.

6. Before concluding, I may mention that when this appeal came up for motion hearing, it was admitted only against Sh. Satya Paul Singh, owner of the truck and was dismissed by the motion bench as against other respondents including the claimants and the driver.

7. In the result, the appeal is allowed and the impugned award of the Motor Accident Claims Tribunal, Gurgaon dated July 23, 1984 is modified to the extent that the liability to pay the awarded amount shall be of the owner alone. I am

informed that the awarded amount has already been paid by the appellant. If that is so, the appellant would be entitled to recover the same from the owner only. In the circumstances of the case, parties are left to bear their own costs.

8. Appeal allowed.