
(2008) 03 P&H CK 0099
In the Punjab And Haryana At Chandigarh

The Oriental Insurance Company Limited	APPELLANT
Vs	
Smt. Anara Devi and Others	RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Citation : (2008) 3 PLR 32 : (2008) 2 RCR(Civil) 619

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Puri, J.—The Oriental Insurance Company, in the present appeal has prayed for setting aside the impugned award dated 2.1.1997 and consequently dismissal of claim petition. The claimant/respondent Nos. 1 and 2, on the other hand, have filed the Cross-objections with the prayer for enhancement of compensation awarded by the learned Tribunal.

2. The brief facts of the case are that on 29.7.1992 at about 7.15 A.M., Rajinder Kumar was going while driving scooter bearing registration No. CHE-738 on the left side of the road on the main dividing road of Sector 42 and village Kajheri. When he reached near electric pole No. 116, one truck bearing registration No. CH-01-C-1800 came from the side of New Mohali Barrier and struck against the scooter of Rajinder Kumar. He fell down and received injuries, He succumbed to the injuries later on. The truck was being driven by Amrit Singh, respondent.

3. It is further pleaded that Rajinder Kumar was aged about 25 years and was a registered Medical Practitioner having his practice under the name and style of Janta Clinic and that he was earning about Rs. 7,000/- per month. The claimants were solely dependent upon the earnings of the deceased.

4. Only respondent No. 3, Insurance Company, contested the claim petition. In the written statement, it took preliminary objections to the effect that the petition was incomplete and not in conformity with the provisions of the Act; that the same was filed to defraud the insurer and was barred by limitation; that the

truck driver was not holding a valid driving licence at the time of accident and that the Insurance Company was, thus, absolved of its liability to pay the amount of compensation. On merits, the accident was denied. It was further pleaded that the claimants were not entitled to any compensation.

5. On the pleadings of the parties, the learned Tribunal framed the following issues:

1. Whether the accident in question was caused by driving truck No. CH-01-C1800 by respondent No. 1 rashly and negligently? OPP.

2. To what amount of compensation, if any, the claimants are entitled and from whom? OPP

3. Whether respondent/driver was holding a valid driving licence at the time of accident? OPR

4. Relief.

6. On issue No. 1, the learned Tribunal held that the accident in question occurred on account of rash and negligent driving of vehicle in question by its driver. On issue No. 2, the dependency of the claimants upon the deceased was held at Rs. 1,7007- per month i.e. Rs. 20,400/- per annum and by applying a multiplier of 17, he awarded compensation of Rs. 3,46,800/- to the claimants. Issue No. 3 was decided against respondent No. 2. As a result of said findings on different issues, the learned Tribunal awarded compensation of Rs. 3,46,800/- along with interest @ 12% per annum from the date of petition till the date of realization of the amount in question. The liability of respondents was held to be joint and several.

7. Feeling aggrieved, the Insurance Company filed F.A.O. No. 603 of 1997 whereas the claimants have filed cross objections No. 64-CII of 2007. Since both the appeal and the cross objections have arisen out of same award, therefore with the consent of counsel for the parties, the same are being disposed of by this common judgment.

8. I have heard arguments of counsel for the parties and have gone through the record of the case.

9. The main challenge of the Insurance Company is regarding the driver licence of Amrik Singh, respondent. The learned Counsel for the Insurance Company has submitted that in para No. 12 of the award, the learned Tribunal has discussed the statement of RW3 Amar Nath who stated that the driving licence of Amrik Singh respondent, Exhibit RW-3/A was a forged one, but, the learned Tribunal has in the last part of that para has wrongly held that respondent No. 3 has failed to prove that the driver of the truck was not holding a valid driving licence. Once the licence produced by the Driver Exhibit RW-3/A is found to be a forged document, the Insurance Company cannot be held liable. At the most, the Insurance Company can be directed to make the payment of the amount of

compensation to the third party, but, the learned Tribunal should have allowed the appellant to recover the said amount from the owner or the driver of the offending vehicle i.e. respondent Nos. 1 and 2. The learned Counsel for the appellant has -relied upon the following authorities to support his contention:

1.) New India Assurance Co. Ltd. v. Kamla.

10. I have carefully considered the submissions raised by the counsel for the appellant and have gone through the record of the case. According to the above-said three authorities, relied upon by the Counsel for the appellant, the Insurance Company has to prove two basic ingredients to avoid liability i.e. (a) that the driving licence of the offending vehicle is fake (b) that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding driving licence of the vehicle. In other words, the insured has the knowledge that the driving licence of the offending vehicle was fake. The relevant para No. 20 of the authority *Lehru and others*, is reproduced as under:

When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of its liability. If it ultimately turns out that the licence was fake the insurance company would continue to remain liable unless they prove that the owner-insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia's* case. We are in full agreement with the views expressed therein and see no reason to take different view.

11. So, in view of the above discussion, there is no evidence on the file to warrant the conclusion that the owner has the knowledge that driving licence of the driver was fake one. So, in these circumstances, the Insurance Company cannot absolve its liability for payment of the amount of compensation. The counsel for the claimants/cross objectors while making prayer for enhancement of compensation, has submitted that the learned Tribunal has not allowed the amount in respect of consortium, loss of estate and funeral expenses in respect of the deceased. He was fair enough to concede that no such prayer for grant of these reliefs has been made before the learned Tribunal and as such no relief, in this regard, can be allowed.

12. The learned Tribunal has assessed the income of deceased Rajinder Kumar, at Rs. 2,500/- per month. No ground for interference in that finding regarding income is made out. Mere claiming an amount of Rs. 7,000/-per month is not sufficient. More-so, when there is no income tax return or any other return on the file. Mere fact that he was a tenant does not prove the income of the deceased. The multiplier of 17 applied to the age of the deceased cannot be said to be on the lower side. So, in these circumstances, no ground for interference for enhancement of compensation is also made out. In the light of what has been stated above, the appeal preferred by the Oriental Insurance Company Limited as well as cross objections filed by the claimants are without any merit and the same stand dismissed. Memo of costs be prepared. A copy of this judgment be placed on the file of cross-objections.