

(1994) 07 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 1185 of 1988

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Kastura and Others

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 103A

Citation : (1994) 108 PLR 553

Hon'ble Judges : Harphul Singh Brar, J; Ashok Bhan, J

Bench : Division Bench

Advocate : N.K. Khosla, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Harphul Singh Brar, J.—One Azad Singh died in an Accident. He was travelling in Trade No.HRE-4536, which was being driven by Balaiti Ram son of Ram Kishan and was owned by Kashmira Singh son of Surain Singh. Since the ,said truck was being driven in a rash and negligent manner, it struck against a shisham tree, resulting in injuries to Azad Singh who died at the spot.

2. In the claim petition filed by Kastura and Smt. Shakuntla Devi wife of Kastura, that is, the parents of deceased Azad Singh, Balaiti Ram Driver was arrayed as respondent No. 1 and Ramesh Chand was shown as respondent No. 2, Respondents 4 and 5 were pro-forma respondents being brothers of the deceased. Kashmira Singh was arrayed as respondent No. 6 by an amendment of the petition by the claimants at a later stage.

3. Written statement was filed on behalf of respondent No.6. The learned counsel for the Insurance Company also filed a separate written statement, denying its liability to pay the amount. 4. Following issues were framed by the Motor Accident Claims Tribunal (for short, the Tribunal) :-

i) Whether the accident in question took place due to rash and negligent driving by respondent No. 1, as alleged ? OPP.

- ii) To what amount of compensation are the claimants entitled to and from whom? OPP.
- iii) Whether the petition is bad for misjoinder and non-joinder of parties? OPR-3;
- iv) Whether the driver of the truck had a valid driving licence ? OPR-3.
- v) Relief.

5. After going through the evidence, the learned Tribunal held under issue No. 1 that the accident in question took place due to rash and negligent driving of Driver Balaiti Ram aforesaid.

6. Under issue No.2, Claimant No.2 that is, the mother only was held entitled to a sum of Rs. 38,400/-by the Tribunal.

7. As about the liability to pay the compensation, it was held by the learned Tribunal that the Insurance Company-respondent No 3 was liable for the amount in question because the Policy stood in the name of Kashmira Singh on the day of occurrence and he was the owner of the track on that day.

8. Issues 3 and 4 were not pressed. Thus, these were disposed of accordingly.

9. The Insurance Company has now filed this appeal against the Award of the learned Tribunal.

10. At the outset it is pertinent to mention that this case is being dealt with under the Old Act.

11. The sole ground on the basis of which the learned counsel for the appellant-Company wants us to set aside the Award of the Tribunal is that Truck No. HRE-4536 with which the accident took place had been sold by its original owner Kashmira Singh in favour of one Ramesh Chand, who happens to have been arrayed as respondent No. 2 in the claim petition and on the day of accident, the Insurance Policy was in the name of Kashmira Singh and, thus, the Insurance Company was not liable to pay the compensation in view of the provisions contained in Section 103-A of the Motor Vehicles Act, 1939; and for that purpose he cited a few authorities also, which we need not mention here as there is no dispute about the proposition that is a vehicle is sold by the Insured at the time of the accident and the Insurance Policy remains in the name of the original owner and is not validly transferred to the latter purchaser, the Insurance Company is not liable. However, this is not the position in this case. The learned counsel for the appellant has not been able to show any evidence, oral or documentary, which could indicate that the truck in question had been sold in favour of Ramesh Chand. The registration of the track was in the name of Kashmira Singh who had admitted that he was the owner of the truck on the day of the accident. Ramesh Chand denied in his written statement that he was the owner of the truck. He rather stated that the owner of the truck was Kashmira Singh. It has come in evidence that he was an employee of Kashmira Singh. There is absolutely no evidence on the file to show that the sale of truck in

question had taken place in favour of Ramesh Chand. Kashmira Singh had himself admitted that he was the owner of the truck, and the insurance of the truck was also in his name. Even RW2 Baliati Ram had stated before the Tribunal that Kashmira Singh was the owner of the truck and he had employed the deceased for collecting the grain.

12. The learned counsel for the appellant wants us to draw an inference of sale of the truck on the basis of the statement of PW2 Gurdev Singh who stated in cross-examination that the owner of the truck was on Ramesh Chand.

13. We have scanned through the evidence, oral as well as documentary, placed on the file, as also the record of the case, but are unable to find any material to substantiate the sale of the offending truck to anyone, much less to Ramesh Chand. It is borne out from the record that the owner of the truck was Kashmira Singh and the Insurance Policy was also in his name at the time of the accident,

14. In view of the discussion made above, we do not find any force in this appeal which is consequent dismissed, but without any order as to costs.