
(1991) 03 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 359 of 1983

The Punjab Dairy Development Corporation Ltd.

APPELLANT

Vs

The Oriental Fire and General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1991) 2 ACC 583 : (1991) ACJ 775 : (1991) 99 PLR 591

Hon'ble Judges : J.V. Gupta, C.J.; R.S. Mongia, J

Bench : Division Bench

Advocate : L.M. Suri and R.M. Suri, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—The only controversy in the present appeal is whether the liability of the Insurance Company under the policy is limited to 50,000/- Rupees or it is unlimited. The said controversy has arisen in the following facts and circumstances.

2. The appellant i. e. the Punjab Dairy Development Corporation Ltd., Chandigarh (in short Corporation) was the owner of milk- tanker No. PUE -5377. On 2nd April, 1976, the said milk tanker was involved in an accident on Tanda Urmar road with scooter No. PDA 4377 coming from the side Dasuya. One Kewal Kumar, who was driving the scooter received injuries. He filed a claim application before the Motor Accident Claims Tribunal, Hoshiarpur, and claimed compensation of Rs. 2,00,000/- on account of injuries sustained by him. After recording evidence, the Tribunal held that the accident took place due to the rash and negligent driving of the driver of the milk- tanker and on the question of compensation, the Tribunal held that the claimant was entitled to compensation of Rs. 55,000/- out of which the liability of the Insurance Company was limited to Rs. 50,000/-

3. Against the aforesaid award, a joint appeal was filed by the present appellant, Insurance Company and the driver, as F. A. O. No. 267 of 1978. on the plea that

the compensation was too excessive. The claimant Kewal Kumar had filed Cross-Objections in the above F. A.O. and claimed enhancement in compensation. The learned Single Judge dismissed the appeal of the Corporation and the Insurance Company and accepted the cross objections and awarded compensation of Rs. 2,00,000/- under various heads plus interest at the rate of 10% per annum from the date of the claim application before the Tribunal to the date of payment. The learned Single Judge further held that the liability of the Insurance Company would be limited to Rs. 50,000/-. The appellant-Corporation being dissatisfied with the judgment of the learned Single Judge, filed the present appeal and raised the controversy as indicated in opening paragraph of the judgment.

4. Before admitting the Letters Patent Appeal, number of opportunities were given to the Insurance Company to appear, but since no one appeared, L. P. A. was admitted on 26th May, 1983 and the following admitting order was passed: -

"Despite a number of opportunities no appearance has been put in on behalf of the respondents.

Admitted.

No stay, but the compensation will be paid to the respondents only on furnishing security to the satisfaction of the Tribunal."

5. When the case had earlier come up for hearing before us, it was stated by the learned counsel for the appellant that Shri V. P. Gandhi, Advocate, was appearing on behalf of the Insurance Company and since during the pendency of the appeal he had expired, actual date notice of the hearing of the case be issued to the Insurance Company. In spite of the service of the actual date notice on the Insurance Company, no one appeared on its behalf when the case was taken up for hearing.

6. The learned counsel for the appellant has submitted that no plea had been taken by the Insurance Company before the Tribunal that its liability is limited to Rs. 50,000/- only in accordance with the policy. In fact, according to the learned counsel, the owner i.e. the appellant as well as the Insurance Company had jointly filed the appeal before the learned Single Judge and even there no such plea was raised in support of the argument that if the Insurance Company does not take a plea that its liability was limited, then the Company is liable for the entire amount, the learned counsel relied upon the judgments of this Court in Smt. Sudha Bahri and Anr. v. Sarvjit Singh (1986) 89 P.L.R. 244 and Nishat and Malwa Bus Private Limited and Anr. v. Smt Inder Kaur (1986) 90 P.L.R. 638. He further drew our attention to the insurance Policy itself and submitted that even according to the policy, the liability of the Insurance Company was unlimited.

7. After hearing the learned counsel for the appellant, we find considerable force in his arguments. No plea was taken by the Insurance Company before the Tribunal that its liability was limited. In view of the law laid down in the above-mentioned judgments, we are of the view that in the absence of the plea by the

Insurance Company that its liability was limited the Insurance Company would be liable for the entire amount awarded. Moreover, we are satisfied from the policy also that the liability was not limited to Rs. 50,000/- in the case of a tanker owned by the appellant.

8 For the reasons recorded above, this appeal succeeds to the extent that the liability of the Insurance Company (respondent No. 1) would not be limited to Rs. 50,000/- and the judgment of the learned Single Judge is modified to that extent. The Insurance Company would be liable for the entire amount awarded as compensation as well as interest thereon. There will be no order as to costs.