
(1990) 06 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 288 of 1986

The United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Bimlesh and Others

RESPONDENT

Date of Decision : 08-06-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95(1)

Citation : (1991) ACJ 36 : (1990) 98 PLR 450

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : L.M. Suri and Arun Kumar, for the Appellant; M.L. Sarin and Sudeep Mahajan and Jai Shree Thakur for Respondent Nos. 1 to 3 and N.K. Khosla, for the Respondent

Judgement

A.L. Bahri, J.—Vide this order six appeals arising out of the Awards of Motor Accident Claims Tribunal relating to the same accident are being disposed of along with cross-objections filed in two of the appeals, i. e. F. A. O. No. 288 and F. A. O. No. 289 of 1985. The judgment is prepared in F. A. O. No. 288 of 1986.

2. Motor Accident Claims Tribunal, Hissar, vide his Award dated December 16, 1985, allowed compensation in two claim cases. In the case of Smt. Bimlesh and others, a sum of Rs. 96,000/- was allowed as compensation on account of the death of Teju and in the case of Smt. Har Kaur and others, a sum of Rs. 1,44,000/- was allowed as compensation on account of the death of Kale Singh. F. A. O. Nos. 288 and 289 of 1986 have been filed by the United India Insurance Co. In the two cases aforesaid respectively, cross-objections on behalf of the claimants have also been filed. F. A. O. Nos. 307 and 308 of 1986 have been filed by the Oriental insurance Co., in the aforesaid two cases, respectively. In one of the trucks involved in the accident, which was owned by Krishnawanti, one of her buffalo was also being carried which was killed, for which she filed separate claim petition. The Motor Accident Claims Tribunal, vide separate Award of the same date, allowed a sum of Rs. 11,600/-. Oriental Insurance Company has filed a

separate appeal against the said Award which is F. A. O. No. 310 1986. Subhash was one of the drivers of the trucks involved in the accident. He filed a separate claim petition which was decided by the Motor Accident Claims Tribunal vide separate Award dated December 16, 1985. A sum of Rs. 20,000/- was allowed to him as compensation. F. A. O. No. 309 of 1986 has been filed by the Oriental Insurance Company against the said Award.

3. The accident took place on September 10, 1983 at about 3/4 a. m. at a place 8 K. Ms. from Hissar on Hissar-Sirsa road. Teju and Kale Singh were travelling in truck No. HRH-7256. Their six buffaloes were loaded in the truck. Seventh buffalo belonged to Krishnawanti, owner of the track. This truck was insured with the United India Insurance Co. and was driven by Subhash Both Teju and Kale Singh were sitting in the tool box of this truck. They were going from Sirsa towards Delhi Another truck No. HRN 6137 loaded with bajri (gravel) driven by Jagdish Lal was coming from the opposite direction in the middle of the road. On seeing that the aforesaid truck was approaching, Subhash driver suddenly blew his horn and used the dipper of the light. When he noticed that the truck was coming on the wrong side, he (Subhash) in order to avoid the accident swerved his truck towards right The driver of the other truck Jagdish Lal also took his truck on the left side of the road, with the result both the trucks struck against each other in the katcha portion of the road. Teju and Kale Singh died. Six buffaloes and seven calves also died on the spot. Seventh buffalo received grievous injuries and died after three days, Jagdish Lal, driver of truck No. HRN-6137 and one more person travelling in the said truck also died. Smt. Bimlesh widow, Satish and Seema, minor children of Teju, claimed a sum of Rs. 1,50,000/- as compensation. Smt. Har Kaur widow of Kale Singh claimed a sum of Rs. 1,75,000/- as compensation. All the claim petitions were contested by respective parties made respondents in the claim petitions. The two claim petitions were consolidated and following issues were framed :--

1. Whether the accident took place due to rash and negligent driving by driver to truck No. HRN-6137 or by driver of truck No. HRH-7256 or due to the composite negligence of both? OPP
2. To what amount of compensation, the petitioners are entitled to get and from whom? OPP
3. Whether the petitioners have no locus standi to file the petitions? OPR
4. Whether the petitioners have no cause of action against the respondents? OPR
5. Whether the petitions are liable to be dismissed on the ground alleged in the written statements? OPR
6. Whether the petitions are not maintainable? OPR
7. Whether the petitions are bad for non-joinder and mis-joinder of parties? OPR
8. Whether the petitions are not properly signed, verified and presented by the

petitioners. If so to what effect? OPR

9. Relief.

4. Under issue No. 1 drivers of both the trucks were held negligent due to which the accident was caused. Compensation was awarded as already stated above under issue No. 2. Issues Nos. 3 to 8 were not pressed before the Tribunal. The Tribunal allowed the compensation in Smt. Bimlesh's case in equal shares against owners and the Interest Companies of both the trucks who were held responsible jointly and severally. The claimants were also held entitled to interest at the rate of 12 per cent per annum from the date of claim application till realisation. They were allowed costs, counsel's fee Rs. 300/-. The share of the minors was to be deposited in a Nationalised Bank. In the case of Har Kaur, a sum of Rs. 1,44,000/- was allowed against the respondents along with interest and costs as above. The amount of interim compensation awarded u/s 92-A of the Motor Vehicles Act was to be adjusted.

5. Since finding of the Tribunal on the question of negligence as well as quantum of compensation have been challenged in the appeals, these issues are therefore, decided in these appeals.

6. The important question arising in these cases is as to who was among the drivers of the two trucks responsible for causing the accident. The parties have led oral evidence as well as documentary evidence in the form of photographs of the spot indicating the situation immediately after the accident. The fact that the two deceased Teju and Kale Singh and the buffaloes died on account of the accident is not disputed. Therefore, evidence in that respect is not being discussed.

7. PW-8 Subhash Chander, who was driver on truck No. HRH-7256, gave his version of the accident. According to him, he was going from Sirsa to Delhi. Near village Moriwala, 4-5 persons were standing, who gave him signal to stop. It was there that Teju and Kale Singh deceased boarded the truck along with their buffaloes. When he was 7-8 K. Ms. behind Hissar, he saw fully loaded truck coming from the opposite direction at a distance of about half a kilometer. The said truck was coming at full speed and on the wrong side of the road. He blew horn and used dipper. He slowed down his speed to 20 K. M. P. H. When the distance between the two trucks was left about 20-25 feet, he noticed that the truck coming from the opposite direction was coming to the katcha side of the road on the wrong side. He also moved his vehicle to his right side. In the mean while the other truck had come to the katcha road on the wrong side. The other truck dashed against his truck which was damaged. His truck was dragged upto a distance of 20-25 feet. During cross-examination, suggestions were put which were denied that it was on account of his negligence that the accident took place. The other witness is PW-7 Sewa Ram, photographer. The photo-prints are Exhibits P-3 to P-8. Their negatives were produced on the file of the judicial criminal case. During cross-examination, this witness stated that truck No. 6137

was going from Hissar to Sirsa side and truck No. 7256 was coming from Sirsa side and going towards Hissar side Truck No. 6137 was standing on its left side with face towards Sirsa. The other truck No. 7256 was standing with face towards Hissar on its right side. Truck No. 7257 was facing towards West when photo Exhibits P-4 was taken.

8. The witness's may tell lies. However, the actual position of the two trucks involved in the accident is quite apparent from the photographs of the two vehicles taken by PW-7 Sewa Ram. Out of these photographs particular reference is being made to photographs Exhibits P-3, P-4 and P-6. From these photographs, it is quite clear that truck No. 7256 had gone on the wrong side of the road when there was a collision between the trucks. The other truck which was going on its correct side of the road had to swerve more towards the left side of the road in order to avoid the accident.

9. It has been argued by Shri N. K. Khosla, Advocate for the Oriental Insurance Company, with whom truck No. 6137 was insured, that the accident took place on account of negligent driving of truck No. 7256 which was driven by Subhash, whereas, Shri L. M. Suri Advocate for United India Insurance Company, with whom truck No. 7256 was insured, has argued that the said Insurance Company is not liable, as passengers travelling in truck No. 7256 were not insured. Shri M. L. Sarin, Advocate for the claimants, has argued that the accident took place on account of negligent driving of both the truck-drivers, but have given due consideration to these arguments. In the case of accident taking place by head-on collision of the two motor-vehicles in the middle of the road, it could be presumed that drivers of both the vehicles involved in the accident were negligent in causing the same. Since, in the present case the accident has not been caused in the middle of the road, the presumption of liability of both the drivers of the two trucks involved in the accident cannot be raised. Then the question arises as to which of the drivers of the trucks involved in the accident was negligent in driving the truck or had violated the rules of the road. In case the two motor-vehicles involved in the accident had remained on their own respective correct side of the road, the accident would not have occurred. As the position is quite clear that truck No. 7255 wherein buffaloes were loaded, had gone on the wrong side of the road, and caused the accident, it was driver of said truck upon whom the entire blame rests. Leaving the correct side of the road, and going towards extreme wrong side of the road per se would raise an inference of negligence on the part of the driver. From the evidence referred to above, it cannot be said that the collision took place in the middle of the road and thereafter position of the trucks changed that they were shown on the katcha portion of the road. The accident, in fact, took place due to entire negligence of the driver of truck No. 7256. The other truck No. 6136 was going on the correct side of the road and on seeing the approaching truck from the opposite direction which was coming towards wrong side, it swerved towards extreme left hand side on the katcha portion of the road it was there that the truck coming from the opposite side collided. In such circumstances there would be no liability of

the driver or owner of truck No. 6137 for causing the accident and it was Subhash driver of truck No. 7256 which was loaded with buffaloes, who took the truck towards wrong side and caused the accident and is liable for the same. The Tribunal, thus, was not justified in holding drivers of both the trucks liable for causing the accident. Finding of the Tribunal is, therefore, modified as above on the question of negligence.

10. In the cross-objections filed on behalf of the claimants, it has been argued by their counsel that the Tribunal wrongly fixed the dependency of the claimants on the deceased and further wrongly applied the multiplier. In the case of Bimlesh Kumari the Tribunal fixed the earning capacity of Teju deceased at Rs. 750/-. Taking into consideration that a labourer was getting about Rs. 25/- per day after allowing a sum of Rs. 250/- for his personal expenditure, the remaining amount of Rs. 500/- was considered as dependency of the claimants on the deceased. Sixteen was applied as the multiplier and the condensation was fixed at Rs. 96,000/-.

11. Teju was aged about 25 years at the time of the accident. His wife Bimlesh appeared as PW 2 and deposed about his income as Rs. 1,500/- per month, out of which a sum of Rs. 1,000/- was used to be paid to her for house-hold expenses. He had left behind a minor son Satish, aged about 5 years and a minor daughter aged about 2-1/2 years. During cross-examination, she further stated that her husband had taken loan of Rs. 10,000/- from Ved Raj and he also had with him Rs. 6,000/- to 7,000/- by selling his four oxen and three buffaloes. They used to sell milk. From her statement, it is apparent that her father-in-law and her husband were in the business of keeping buffaloes and selling milk. There is no other evidence that they were possessing any agricultural land. Same income Teju must have been deriving from the business of selling milk. In such circumstances his income at the minimum could be fixed at Rs. 1,000/.. If 1/3rd was used by him for his own expenditure, say about Rs. 300/-, a sum of Rs. 700/- per mensem was the dependency of the claimants of Teju deceased. Since the deceased was aged about 25-26 years and he left behind Bimlesh widow also aged about 25 years and two minor children, 20 could be the reasonable multiplier. In this manner, total compensation would come to Rs. 1,68,000/-. Since in the claim petition a sum of Rs. 1,50,000/- was claimed, the claimants are held entitled to a sum of Rs. 1,50,000/-.

12. Kale Singh deceased was aged about 51 years, PW-1 Har Kaur his widow appeared in the witness-box and stated her own age as 50 years. Kale Singh was doing the business of selling cows and buffaloes. He was separately residing from his son Teju. His income was stated to be Rs. 2,000/- per mensem, out of which he used to pay a sum of Rs. 1,500/- to her for household expenses. He left behind three unmarried children and four married children. She further stated that she had no other source of income. During cross examination, she denied the suggestion that Kale Singh was 70 years old. But she admitted that Kale was not an Income Tax assessee. Kale had taken loan of Rs. 11,000/- from one Surja

and Rs. 5,000/- and another sum of Rs. 10,000/- from another person. The Tribunal assessed the income of Kale Singh at Rs. 1,500/- per mensem and leaving a sum of Rs. 500/- for his expenses, the dependency was fixed at Rs. 1,000/- per mensem. Applying 10 as multiplier, compensation was determined at Rs. 1,20,000/-. A sum of Rs. 24,000/- was further allowed as value of the six buffaloes I do not find any error in the matter of fixing dependency or applying the multiplier in this case. The Tribunal, thus, lightly allowed in all a sum of Rs. 1,44,000/- to Har Kaur claimant on account of the death of Kale Singh and on account of six buffaloes. Finding of the Tribunal is thus accordingly affirmed in this respect.

13. Further question for determination is about the respective liabilities of the parties for payment of the amount of compensation as determined above. Since it has been held that driver and owner of the truck in which bajri was being carried was not responsible for causing the accident, neither they nor the Insurance Co. i. e. Oriental Insurance Co. are liable to pay compensation. The truck No. 7256 in which buffaloes were being carried was insured with United India Insurance Co and it was due to the negligence of the driver of his truck which caused the accident. The driver of this truck Subhash and Krishnawanti its owner would be liable to pay the entire compensation. Shri L. M. Suri, Advocate, appearing on behalf of the United India Insurance Co., with whom truck No. 7256 was insured, which was driven by Subhash driver has argued that since passengers were being carried in this truck, they were not insured under the policy of insurance and in view of Sections 95 and 96 of the Motor Vehicles Act(SIC) the Insurance Co. i. e. the United India Insurance Co is not liable to pay compensation to the dependants of the deceased who were travelling in this truck. There is force in this contention Such a matter was considered by Full Bench of this Court in Oriental Fire and General Insurance Co. v. Gurdev Kaur and Ors. (1987) 89 P. L. R. 461 = 1967 A. C. J. 158 while referring to the provision of Sections 95 (1) (b) & 96 of the Motor Vehicles Act, it was held that the Insurance Co. was not liable to satisfy the Award because in terms of Section 96(1) of the Act, the Insurance Co. was liable to satisfy only such Awards which were in respect of a liability required to be covered by a policy under Clause "B" of Sub-section (1) of Section 95 of the Act In that case a person who was travelling in a truck sustained injuries. He was accompanying his goods which were being carried in the truck. On his death his dependants filed the claim application. It was held that passenger in the truck was not covered nor he was required to be covered u/s 95 (1) (b) because he was not travelling in the goods vehicle by reason of or in pursuance of any contract of employment. Following the Full Bench decision the same view was taken in The New India Assurance Co. Ltd. v. Shanti Devi and Ors., (1986-2) 90 P. L. R. 106. by S. S. Sodhi, J. The deceased was travelling in a truck in order to guard his goods. It was held that the insurance company was not liable for the compensation awarded and the amount awarded roust rest upon the driver and owner of the truck. The Bombay High Court also took similar view in the Full Bench case in Oriental Fire and

14. Shri M. L. Sarin. Senior Advocate, appearing on behalf of the claimants, has argued that the deceased Kale and Teju were travelling in the truck in the course of employment and hence the Insurance Company with whom the said truck was insured would be liable to pay the compensation. In this respect reference has been made to the pleadings of the parties as well as to the evidence produced in this case. In Smt. Bimlesh's case (supra) in para 24, it was mentioned that Truck No. 7256 owned by Krishnawanti was carrying seven buffaloes and 7 calves. Out of the same, six buffaloes belonged to Kale and one buffalo and one calf belonged to Krishnawanti, owner of the truck. The said buffalo and the calf of Krishnawanti were to be delivered to her relative in Delhi. For this job Smt. Krishnawanti employed Teju and Kale Singh as care-takers on remuneration of Rs. 50/-. This assertion was denied in the written statement filed by Krishnawanti and Subhash respondents. The Insurance Company also denied this assertion. The only witness on the subject produced was PW 8 Subhash. As per his evidence, Lokesh Kumar and Sat Parkash were already sitting with him in the truck when he left for Delhi. It was near village Moriwala that on signal being given by 3-4 persons, he stopped the truck and allowed them to board their buffaloes. These persons were Kale Singh and Teju deceased. He did not know Teju and Kale and came to know about their names after the accident. His evidence is silent as to when and where the owner of the truck Krishnawanti engaged Kale and Teju on payment of Rs. 50/- to deliver her own buffalo and the calf to her relative in Delhi. It was PW 6 Jaipal Singh who stated that buffaloes of Kale Singh and Teju were loaded in the truck and the 7th buffalo was to be delivered to the relative of the owner of the truck. The owner of the truck paid Rs 50/- to Kale Singh and Teju. His statement, on which reliance has been placed by Shri M. L. Sarin, Advocate, cannot be accepted. Subhash has not disclosed that Krishnawanti was travelling in the truck when he started or that she was present when the buffaloes of Teju and Kale were loaded. Jaipal Singh witness appears to have been introduced afterwards in the scene. Suddenly when on the way on signal being given the truck was stopped and buffaloes of Teju and Kale were loaded, there was no question of any contract between the owner of the truck and them to deliver the 7th buffalo of Krishnawanti to her relative in Delhi. The driver or the cleaner who were admittedly employees of Krishnawanti could perform the said duty. It is further not known as to from where the buffalo of Krishnawanti was boarded on the truck. This story put forth by the claimants that Kale and Teju were travelling in the truck as employees of Krishnamanti has not been established. That being the position. Kale and Teju being passengers travelling in the truck along with their animals, were not insured in the policy of insurance relating to the said truck The United India Insurance Co. therefore, will not be responsible to pay the compensation on account of deaths of Kale and Teju. Finding of the Tribunal is modified accordingly.

15. For the reasons recorded above, all the appeals filed by the Insurance

Companies are allowed with no order as to costs. Cross-objections filed by the claimants in Bimlesh Kumari's case are also allowed with no order as to costs. However, in Har Kaur's case, they are dismissed Parties are left to bear their own costs. The Awards of the Tribunal are modified. Smt. Bimlesh and other claimants would get compensation amounting to Rs 150,000/ in equal shares with 12 per cent per annum interest from the date of filing of the claim application till realisation from Subhash and Krishnawanti, driver and owner of the truck (No. HRH 7256) who would be liable to pay the same severally and jointly The share of the minors would be deposited in the Nationalised Bank in a fixed deposit so that it may earn interest. On attaining majority they would be paid their share. Smt. Har Kaur is held entitled to compensation of Rs. 1,44,000/- against Subhash and Krishnawanti only, who would be liable to pay the same jointly and severally. Since the accident was caused due to the negligent driving of truck by Subhash, he will not be entitled to any compensation for the injuries suffered by him. His claim petition shall stand dismissed. Smt. Krishnawanti would get the compensation for her buffalo from Subhash, driver of the truck, only.