
(2005) 05 SHI CK 0037
In the High Court Of Himachal Pradesh

United India Insurance Co. Ltd.

APPELLANT

Vs

Bishna and Others

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 4 ACC 252 : (2007) ACJ 709

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This appeal u/s 173 of the Motor Vehicles Act is directed against the award of the Motor Accidents Claims Tribunal, Una (H.P.) in M.A.C. Petition No. 3 of 1996 decided on 25.6.1997.

2. The facts necessary for decision of the case are that Lachhmi Devi was hit by a tractor No. HP 20-0858. The claimants, i.e., the husband and sons of Lachhmi Devi filed a claim petition u/s 166 of the Motor Vehicles Act, claiming compensation. In this claim petition, it was alleged that the accident took place on 30.11.1995 at 2.30 p.m. Deceased along with petitioner No. 1 were coming home after working in the fields when she was hit by a tractor No. HP 20-0858 which was being driven rashly and negligently by Ravi Dutt, son of Rampal, respondent No. 5. It was further alleged that the tractor in question was owned by Rampal, father of Ravi Dutt and Rakesh Kumar, son of Rampal who are respondent Nos. 6 and 7 in the present appeal. The respondent Nos. 5 to 7 filed a common reply. It was admitted that the tractor was owned by Rakesh Kumar, son of Rampal. The factum of the accident was denied. It was further stated that on 30.11.1995 the tractor in question was driven by Rakesh Kumar and not by Ravi Dutt.

3. The evidence was led by both the parties. The Tribunal held that the accident had taken place. It was also found that at the time of the accident Rakesh Kumar

was driving the tractor. Since Rakesh Kumar was having a valid driving licence, the liability to pay the compensation was that of the insurance company.

4. The present appeal has been filed by the insurance company. The main question arises for determination is whether it was Ravi Dutt, respondent No. 5 or Rakesh Kumar, respondent No. 6, who was driving the vehicle.

5. Ms. Vandana Kuthiala, learned Counsel for the appellant insurance company has submitted that it stands proved on record that at the time when the accident occurred, the tractor was being driven by Ravi Dutt, respondent No. 5. Admittedly Ravi Dutt does not have any valid driving licence and, therefore, the insurance company cannot be burdened with the liability to pay the compensation.

6. On the other hand, Mr. Ajay Sharma, learned Counsel for respondent Nos. 5 to 7 has submitted that the finding of the trial court is correct and calls for no interference. He submits that if two interpretations are possible from the evidence recorded then since the Tribunal has taken one view, this Court in an appeal should not disturb the same.

7. Constable Gurdas Ram, PW 2, has proved on record the original F.I.R., which is Exh. P2. This F.I.R. was recorded at the instance of the claimant Bishna. It has been recorded on 30.11.1995 at about 4.20 p.m., i.e., soon after the accident. As per this F.I.R. the tractor No. HP 20-0858 involved in the accident was being driven by Ravi Dutt, son of Rampal, caste Brahmin, resident of Surjehara, Tehsil and District Una, H.P. This was the first report which was recorded immediately after the accident.

8. Claimant Bishna has appeared as PW 3. He is an eyewitness to the accident. He stated that the accident had occurred due to rash and negligent driving of Ravi Dutt. In cross-examination he has stated that he knew Ravi Dutt prior to the accident since he used to plough the fields in his village. A suggestion was put to him that Rakesh Kumar was driving the tractor at the time of accident. He has denied the suggestion. Thereafter another suggestion was put to him that the accident had not taken place with the tractor which also he denied.

9. Jarnail Singh, PW 4, is also an eyewitness to the accident. He also stated that at the time of the accident, Ravi Dutt was driving the tractor. He had apprehended the driver, i.e., respondent No. 5 immediately after the accident and had not allowed him to leave the place. He has denied the suggestion that Rakesh Kumar was driving the tractor at the time of the accident.

10. On behalf of the respondents, Ravi Dutt has appeared as RW 2. He has stated that he was not driving the tractor and the tractor was being driven by Rakesh Kumar, respondent No. 6. He stated that no accident had taken place but when they reached near the village Dangoli, some police personnel and people collected at the spot had stopped them. He admitted that he has no driving licence. He also admitted that a criminal case is pending against him in the trial

court. The statement of RW 3 is also similar. He also stated that no accident had taken place and that he was not driving the tractor on the relevant date.

11. Karam Singh, RW 4, stated that he was a labourer and was also travelling on the tractor. He stated that when they reached near the village Dangoli, the police personnel had stopped the tractor and asked them to go to the police station. According to him no accident had taken place. In examination-in-chief, this witness is silent as to who was driving the tractor. He has denied the suggestion in cross-examination that the tractor was being driven by Ravi Dutt, respondent No. 5.

12. This is the entire evidence with regard to the question as to who was driving the tractor at the time of accident. The first report of the accident was made soon thereafter and recorded in the F.I.R. This F.I.R. is exhibited as P2. In this report it is clearly mentioned that Ravi Dutt, respondent No. 5 was driving the tractor. PW 3 and PW 4 both have reiterated the stand in court. They have clearly stated that Ravi Dutt was driving the tractor when the accident had taken place. In fact PW 4 stated that he apprehended Ravi Dutt on the spot and did not allow him to leave the place. The defence taken by the respondent is contradictory. On the one hand, respondents in their written statement have taken the plea that no accident had occurred and on the other hand, a suggestion has been put to the claimant in cross-examination that at the time of the accident, Rakesh Kumar was driving the tractor.

13. Ravi Dutt, respondent No. 5 was nabbed by PW 4 and thereafter a case was lodged against him by the police. There is no reason why the claimant Bishna or his witness Jarnail Singh should falsely implicate Ravi Dutt in the accident. Since Ravi Dutt did not have a driving licence and realizing that the liability to pay compensation may be fastened upon them, it appears that respondent Nos. 5 to 7 have cooked up the plea that it was Rakesh Kumar who was driving the said vehicle.

14. This stand is apparently false. From the evidence, it stands clearly proved that it was Ravi Dutt, respondent No. 5 who was driving the tractor at the time of the accident. Admittedly Ravi Dutt did not have any driving licence. Ravi Dutt is the brother of Rakesh Kumar, owner and son of Rampal. Rakesh Kumar was also alleged to have been sitting on the tractor. Therefore, the owner knew that the tractor was being driven by a person who was not having a valid driving licence. As such, the insurance company cannot be held liable to pay the compensation.

15. In the present case, the amount of compensation has been deposited by the insurance company in this Court. Out of which, some amount has been released in favour of the claimants. Therefore, it would be inequitable to ask the claimants to refund the same and proceed against the owner of the vehicle.

16. Though I have exonerated the insurance company of being liable under the policy but in view of the fact that the vehicle was admittedly insured with it and keeping in view the law laid down by the Apex Court in National Insurance Co.

Ltd. Vs. Swaran Singh and Others, ; New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , the insurance company is at liberty and shall be entitled to recover the entire amount from respondent Nos. 5 to 7 by filing an execution petition under the provisions of Motor Vehicles Act itself against the said respondents and without taking recourse to any other legal proceedings.

17. Appeal is allowed in the aforesaid terms, with no order as to costs.