(1997) 07 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 1017 of 1990

United India Insurance Co. Ltd. — APPELLANT

Vs

Parkash Kaur — RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Evidence Act, 1872 — Section 65, 7
Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1997) 2 CivCC 609 : (1997) 4 RCR(Civil) 163

Hon'ble Judges : T.H.B. Chalapathi, J;R.S. Mongia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—Challenging the judgment of the learned Single Judge in FAO No. 951 of 1983 dated August 16,1988 the Insurance Company filed this appeal under clause X of the Letters Patent.

2. On account of the death of one Mukand Lal in an accident that took place on May 31, 1981 due to the rash and negligent driving of the taxi bearing No. CHZ-77 and the truck No. PUT-6817 the legal heirs of the deceased filed a claim petition in dent MACT case No. 24 of 1981 before the Motor Accident Claims Tribunal, Rupnagar claiming compensation of Rs. Three lakhs. On the basis of evidence result of negligence, of both the drivers of the taxi car and truck and accordingly awarded a sum of Rs. one lakh as compensation to the claimants and apportioned the liability equally against the Insurance Companies of the taxi as well as the truck namely Oriental Fire and General Insurance Company and United India Insurance Co. Ltd.(Appellant herein). The Tribunal also awarded interest at the rate of 10% on the amount of compensation from the date of application till payment. The Appellant namely United India Insurance Co. Ltd. with which the taxi car was insured challenged the award of the Tribunal in the first appeal. Learned Single Judge Amrit Kaur 1987 (1) PLR 618, held that the insurance policy which is marked Ex. R.6 is not admissible in evidence as the

conditions envisaged by Section 65 of the Evidence Act did not exist. Therefore, the liability of the insurance Company is unlimited and accordingly dismissed the appeal filed by the Appellant confirming the compensation of the Tribunal. The Insurance Company filed this appeal.

3. The learned Counsel appearing for the Appellant argued that the copy of the insurance policy was marked as Ex. R.6 without any objection and the liability of the Insurance Company is restricted to the Insurance Company is restricted to the amount payable under the provisions of the Motor Vehicles Act and as the policy is a public document a copy of the same is admissible in evidence without any formal proof and, therefore, the learned Single Judge erred in holding that the policy cannot be looked into as inadmissible under law.

4. A full Bench of this Court in FAO 1154 of 1988 United India Insurance Co. Ltd. v. Kamla Rani, held (decided ?) on May 29, 1997 that the policy of Insurance is a public document falling u/s 7 of the Indian Evidence Act and, therefore, a copy of the same is admissible in evidence. Full Bench specifically over-ruled the decision in Malwa Bus Service v. Amrit Kaur, (supra). Therefore, the copy of the insurance policy which is marked as Ex. R.6 is admissible in evidence. In Ex. R.6 it is clearly mentioned that "limit of amount of Company''s liability is such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939" u/s 95(2)(b) (ii) as applicable on the dare of accident the liability in respect passengers is limited to Rs. 10,000/- per passenger. Thus, the liability of the Insurance Company under the Motor Vehicles Act, 1939 is limited to Rs. 10,000/- per passenger and, therefore, the liability of the Appellant is to be restricted to Rs. 10,000/- only.

5. We are, therefore, of the opinion that the award passed by the Tribunal as confirmed by the learned Single Judge requires to be modified restricting the liability of the Appellant insurance company to Rs. 10,000/- with interest at the rate of Rs. 10% per annum from the date of application till the amount is actually paid. We accordingly allow the appeal and modify the award limiting the liability of the Insurance Company namely the Appellant with which the taxi was insured to the extent of Rs. 10,000/- with interest at the rate of Rs. 10% per annum from the date of application till the payment.

6. It has been brought to our notice that the Insurance Company has paid the amount to the claimants. Therefore, the Insurance Company can recover the balance of the amount paid in excess of Rs. 10,000/- with interest only from the owner of the taxi. They shall not seek any recovery or restitution of the amount from the claimants. The appeal is accordingly allowed in part as indicated above. There will be no order as to costs.