(2010) 08 P&H CK 0515

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 5111 of 2006

United India Insurance Co. Ltd. APPELLANT

Vs

Ramji Lal and others RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 149(4), 149(5), 2(14)
Rules of the Road Regulations, 1989 — Rule 28

Citation : (2012) ACJ 640

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.

I. The lis:

1. The insurance company challenges the award passed against it on the ground that the deceased had taken a lift from the driver of the tractor and seated himself on mudguard. He was thrown out of tractor when it was in motion and got killed. The insurance company pleads that a tractor is not meant to carry passengers and had seating capacity as per the registration certificate book of only one that is meant for the driver. Further, learned counsel appearing for the insurance company pleads that the person, who died, was being carried on the mudguard of the tractor and there was no insurance cover for a person travelling on the tractor. The tractor is neither a passenger vehicle nor a goods vehicle where persons could be carried and the insurance company for the tractor will, therefore, be not made liable. II. Statutory meanings for tractor, trailer and goods carriage:

The ''tractor'' is defined u/s 2 (44) of the Motor Vehicles Act "as a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The tractor by itself cannot, therefore, be treated as a goods carriage. It will become a goods carriage only if it is attached to a trailer which is defined u/s 2 (46) of the Motor

Vehicles Act, where the ''trailer'' means "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle". It may be noticed that a ''goods carriage'' which is defined u/s 2 (14) means "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods".

III. Compulsory insurance to a workman covered under the Workmen''s Compensation Act extends only to persons named u/s 147 of the Motor Vehicles Act:

2. It is commonplace knowledge that a trailer which is attached to a motor vehicle (tractor) is constructed only for the purpose of carriage of goods. In the scheme of things normally a goods carriage shall not carry passengers. However, section 147 makes provision for compulsory insurance for the owner of the vehicle as bound to cover the liability in respect of death or bodily injury sustained by an employee arising out of and in the course of employment, who shall have a right of claim under the Workmen''s Compensation Act. Such an employee shall be either (a) engaged in driving the vehicle, or (b) if it is a public service vehicle, engaged as conductor of the vehicle or in examining tickets on the vehicle, or (c) if it is a goods carriage, being carried in the vehicle. It could therefore be seen that a workman carried in a goods carriage who is attracted to the provisions of Workmen''s Compensation Act shall always enjoy a compulsory insurance cover. If a workman travels in a goods carriage, namely, a trailer, an ''Act Policy'' is bound to cover the risk to the insured''s workman or his representatives in case he dies in the accident. Another type of situation where a passenger in a goods carriage would be protected is what is provided u/s 147 (1) (b) (i), when even an owner of the goods travelling along with goods in the vehicle would obtain an insurance cover.

IV. A person travelling on mudguard is an unauthorised person:

3. The Rules of the Road Regulations, 1989 sets out under rule 28 the following:

28. Driving of tractors and goods vehicles.--A driver when driving a tractor shall not carry or allow any person to be carried on tractor. A driver of goods carriage shall not carry in the driver''s cabin more number of persons than that is mentioned in the registration certificate and shall not carry passengers for hire or reward.

This rule makes a distinction between a driver driving a tractor and a driver of goods carriage which has a cabin. If it is a goods carriage, there could be a person other than the driver in a driver''s cabin whose permitted number shall be prescribed in the registration certificate itself, If it is a tractor, there is no need of a reference even to the registration certificate. The workman carried in a goods carriage or a driver of any vehicle, who is a workman, shall always be entitled to an insurance cover. There is no compulsory insurance for a person other than the driver to travel in a tractor. We have already seen that tractor by itself is not a goods carriage and the compulsory insurance cover is only for a workman carried in a goods carriage or a driver, who is a workman. If, therefore, a person is travelling on tractor, who is not a driver but an unauthorised passenger, there was no need for compulsory insurance.

V. Pay and recover principle is also not applicable:

4. The pay and recover principle applies only to situations where the claim is by a third party/workman and it is fully covered by the requirements of compulsory insurance u/s 147. If the Act does not require a policy to be taken for a traveller other than a driver of a tractor or to cover third party risk, it means that there is no requirement of insurance at all and the question of making the insurer liable to pay and recover u/s 149 (4) proviso or u/s 149 (5) of the Motor Vehicles Act does not arise. VI. Conclusion:

The insurance company could not have been made liable. The award passed against the insurer is clearly wrong, the award is set aside and the appeal is allowed. However, if any amount has been recovered by the claimants from the insurer, the insurer shall not recover the same from the claimants but they will have a right of enforcement only against the owner of the tractor who are arrayed as respondent Nos. 7 and 8.