
(1999) 09 P&H CK 0137

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 2052 of 1999 and Civil Miscellaneous No. 11425-CII of 1999

United India Insurance Company

APPELLANT

Vs

Balwant Singh and Others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2000) 2 ACC 56 : (2000) ACJ 1575 : (2000) 124 PLR 138 : (1999) 4 RCR(Civil) 302

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Sanjiv Pabbi, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This appeal by the Insurance Company is directed against the award dated May 3, 1999 passed by the Motor Accident Claims Tribunal, Karnal awarding a sum of Rs. 1,01,000/- as compensation to the claimants along with interest at the rate of 12% per annum on account of the death of their father Parsa Ram who died in a motor accident on 23.9.1997.

2. The only ground on which the award has been challenged before us is that the driver of the offending vehicle did not produce his driving licence on the record of the case and, therefore, it could not be said that he possessed a valid driving licence on the date of the accident. Shri Sanjiv Pabbi, Advocate for the appellant placed reliance on a judgment of this Court in New India Assurance Co. Ltd. Vs. Surinder Paul and Others, to contend that the Insurance Company cannot be held liable where the driver did not produce the driving licence. We are unable to accept this contention. The plea of the Insurance Company before the Tribunal was that the driver of the vehicle did not possess a valid driving licence on the date of the accident. Issue No.3 was framed to the effect whether respondent No. 1 (driver of the vehicle) was not holding a valid driving licence at the time of

accident. The onus to prove this issue was on the Insurance Company. The driver of the offending vehicle did not appear as his own witness and even though the Insurance Company summoned him to appear as a witness he neither accepted the summons nor stepped into the witness box. The fact remains that the driving licence has not been produced on me record. The question that arises for consideration in such circumstances is whether it can be said that the driver of the vehicle did not possess a valid driving licence. The answer to such a question has to be in the negative. When the licence itself has not been produced how can anyone say that the licence was not a valid one. It is not the case of either of the parties that the driver of the offending vehicle did not possess a licence. The plea taken is that his licence was not valid and that is why the issue framed was whether the driver possessed a valid driving licence. Since the driver did not appear in the witness box and the licence has not been produced the Insurance Company has failed to prove that the driver was not holding a valid driving licence at the time of the accident. The Tribunal was, therefore, right in deciding this issue against the Insurance Company. In Surinder Paul's case (supra) the plea of the Insurance Company from the very beginning was that the driver of the vehicle therein did not hold a driving licence at all and even evidence was led in support of that plea. The Tribunal in that case did not find that issue in favour of the Insurance Company but the learned Single Judge who heard the appeal reversed the finding on that issue and held that the driver did not possess a licence at all. It was on the basis of this finding that the Insurance Company was held not liable. In the case before us the plea of the Insurance Company is that the driver did not possess a valid driving licence and it has failed to substantiate this plea. If the driver has not produced his driving licence, the claimants are not at fault and the fact remains that the Insurance Company has failed to prove that he did not possess a valid driving licence. The Insurance Company must, therefore, be held liable to indemnify the insured.

3. No other point was raised.

4. In the result, there is no merit in the appeal and the same stands dismissed.