
(2008) 05 P&H CK 0106
In the Punjab And Haryana At Chandigarh

United India Insurance Company Limited	APPELLANT
Vs	
Shanti Devi and Others	RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2008) 152 PLR 43 : (2008) 3 RCR(Civil) 541

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Puri, J.—Challenge in this appeal is to the award dated 3.2.1997 passed by Shri B.M. Bajaj, the then Motor Accident Claims Tribunal, Karnal, whereby he granted an amount of Rs. 2,12,000/- as compensation to the claimants on account of death of Soran Ram alias Swaran Singh in a motor vehicular accident.

2. The brief facts as are divulged from the pleadings of the parties are that on 24.2.1993, Soran Ram, on the instructions of his employer, loaded the household goods from Karnal in his tractor trolley No. HR-05B-1611 for un-loading the same at the place of one Shri Subhash Chander Single of Kurukshetra. So, after un-loading the household goods at Kurukshetra, the deceased along with one Shakti Parkash son of the employer were coming back by driving the tractor-trolley at a very moderate speed on the left side of the road. When they reached near village Manak Majra, a Swaraj Mazda No. HR-26-1879 came from the opposite side driven by Ranbir Singh rashly and negligently and struck against the tractor trolley. Because of the great impact, the tractor was badly damaged and the front and rear wheel tyres of the tractor burst, Soran Ram came down and was watching the tractor trolley in order to find out what loss to the tractor was caused by the driver of Swaraj Mazda No. HR-26-1879 due to his rash and negligent driving. In the meanwhile, another truck No. PCE-8813 driven by Buta Singh, rashly and negligently came from the side of kurukshetra and struck against the tractor trolley from behind and caused the accident in question in

which Soran Ram received injuries. Both the legs of Soran Ram were badly crushed. He was brought to Civil Hospital, Karnal and then was shifted to PGI, Chandigarh where he remained admitted for some months and then he died due to the injuries sustained by him in the aforesaid accident. A case was got registered against both the drivers. Postmortem examination on the dead body of Soran Ram alias Swaran Singh was conducted by the doctors in General Hospital, Sector 16, Chandigarh.

3. It was further pleaded that the deceased was about 40 years old at the time of accident. He was working as a driver and earning Rs. 2,000/- per month as salary excluding other benefits. Therefore, the claimants claimed compensation of Rs. 30,00,000/-.

4. The claim petition was contested by the respondents.

5. Ranbir Singh @ Randhir Singh and Bhim Singh, respondents pleaded that the accident occurred due to the negligence of the deceased who had dashed the tractor trolley with Swaraj Mazda.

6. United India Insurance Company with which Swaraj Mazda No. HR-26-1879 was insured also took up the plea that the driver of the tractor and the driver of truck No. PCE-8813 were negligent. It also took up the plea that the driver of the offending vehicle was not possessing a valid driving licence at the time of accident.

7. Respondent Nos. 4 and 5 driver and owner of truck No. PCE-8813, also filed joint written statement pleading that the case had been registered against the driver of truck No. PCE-8813 on false and concocted grounds. According to them, the accident in question was the result of rash and negligent driving of driver of Swaraj Mazda No. HR-26-1879. The other averments of the claimants were denied.

8. Oriental Insurance Company, respondent No. 6, with which Truck No. PCE-8813 was insured pleaded that the accident took place due to rash and negligent driving of tractor as well as driver of Swaraj Mazda. According to it, the driver of truck No. PCE-8813 was neither negligent nor rash and, in fact, the truck was not involved in the accident in question.

9. Ashwani Kumar, owner of tractor No. HR-05B-1611 in separate written statement averred that the accident had taken place because of fault of driver of Swaraj Mazda No. HR-62-1879 and the driver of truck No. PCE-8813. So Ashwani Kumar pleaded that he was not at all liable for the aforesaid accident.

10. National Insurance Company, with which tractor No. HR-05B-16U was insured pleaded that the alleged accident took place due to the negligence of drivers of four wheeler and the truck. The other pleas of the claimants were denied.

11. On the pleadings of the parties, the learned Tribunal consolidated both the petitions, one filed by the claimants and the other by Ashwani Kumar, claiming

compensation for the damage caused to his tractor, and framed the following issues:

1. Whether the accident in question took place due to rash and negligent driving on the part of Ranbir Singh, driver while driving Mazda No. HR-26-1879, as alleged in the claim petition? OPP
2. To what amount of compensation, the claimants are entitled to and from whom? OPP
3. Whether the petitions are not maintainable in the present form? OPR
4. Whether the petitions are hopelessly time barred? OPR
5. Whether the petitions are bad for mis-joinder of parties? OPR
6. Whether the driver of the tractor was not holding a valid driving licence at the time of accident? OPR
7. Whether the driver of the offending vehicle was not holding a valid driving licence at the time of accident in question? OPR
8. Relief.

12. The learned Tribunal decided issue No. 1 holding that the accident took place due to rash and negligent driving of drivers of both the vehicles viz. Swaraj Mazda No. HR-26-1879 and Truck No. PCE-8813. Under issue Nos. 2 and 7, the monthly income of Soran Ram, deceased was taken at Rs. 15,00/- . After deducting personal expenses to the tune of Rs. 500/- the monthly dependency of Smt. Shanti Devi and others on the deceased was assessed at Rs. 1,000/- . The yearly dependency was fixed at Rs. 12,000/- . After applying a multiplier of 16, the total amount of compensation payable to the claimants was assessed at Rs. 1,92,000/- . The learned Tribunal also held that the claimants must have spent atleast a sum of Rs. 20,000/- on the medical treatment of Soran Ram, deceased. Therefore, total compensation of Rs. 2,12,000/- was awarded to the claimants. Issue Nos. 3, 4, 5 and 6 were decided against the respondents.

13. As a result of above findings, the claimants were awarded a sum of Rs. 2,12,000/- as compensation along with interest at the rate of 12% per annum from the date of petition viz. 7.4.1993 till realization, in equal shares against the respondents who were held liable to pay the same in the ratio of 50:50 jointly and severally.

14. Feeling aggrieved with the amount of compensation, the United India Insurance Company Limited, has preferred the instant appeal for reversal of award of Motor Accident Claims Tribunal, Karnal.

15. I have heard arguments addressed by the counsel for the parties and have gone through the record of the case.

The learned Counsel for the Insurance Company has submitted that the vehicle

which was insured with the appellant was not driven by a duly licensed driver and as such the Insurance Company cannot be held liable to pay the amount. In para No. 17 of the award, the learned Tribunal has held that driving licence of driver Ranbir Singh was not issued by the Licensing Authority, Cuttack. So, once the licence is found to be fake, the observation made by the learned Tribunal to the effect that in the absence of mens rea or knowledge or intention to violate the terms of the policy, the Insurance Company would not be discharged of its liability, is not applicable to the facts of the present case. The learned Counsel for the appellant has relied upon the following authorities:

1. National Insurance Co. Ltd. Vs. Swaran Singh and Others, ;
2. United India Insurance Co. Ltd. Vs. Davinder Singh, .
3. National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, .

16. I have considered the said submissions but do not find any force in the same. The learned Tribunal has passed the order strictly in consonance with the authority reported in Swaran Singh's case (supra). The Insurance Company is not only to prove the fact that the licence was fake but has to prove the fact that the owner had the knowledge of the fact that the licence of the driver was fake. The extract of the said ruling is reproduced herein under:

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified at the relevant time.

17. Authority in Davinder Singh's case (supra) lays down that once the original licence is found to be fake, the renewal does not make it a valid document.

18. In authority reported as Laxmi Narain Dhut (supra), it has been held that in respect of damage to property, the Insurance Company can not be ordered to indemnify the third party, in case of breach of conditions of policy.

19. So, in view of the above discussion, the appeal is without any merit and the same stands dismissed with costs.