
(2006) 07 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 1182 of 1993

United India Insurance Company Ltd.	APPELLANT
Vs	
Joginder Kaur and others	RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Citation : (2006) 4 RCR(Civil) 745

Hon'ble Judges : Surya Kant, J

Advocate : Ravinder Arora, Advocate. Navkiran Singh, Advocate., Advocates for appearing Parties

Judgement

Surya Kant, J.—This order shall dispose of F.A.O. No. 1182 of 1993 preferred by the United India Insurance Company against the award dated 1.2.1993 passed by the Motor Accident Claims Tribunal, Patiala as well as the crossobjections preferred by the respondentclaimants for modification of the said award and for enhancing of the compensation amount.

2. Joginder Singh (since deceased) who was aged about 50 years, was working as a truck driver on the truck owned by respondent No. 6. He was getting salary of Rs. 1200/ per month. On 6.4.1990, at about 5.30 A.M. Joginder Singh was driving truck No. HYE9273 when it met with an accident near village Gajju Majra, Tehsil Samana, District Patiala resulting into Joginder Singh's death at the spot. The truck was insured with the appellantCompany. The respondentclaimants, who are widow and four children of the deceased, sought compensation of Rs. 3 lacs.

3. The claim petition was contested by the appellantCompany on the ground that deceased Joginder Singh was not holding a valid driving licence. It was also averred that respondent No. 1, namely, owner of the truck had no valid permit. On the pleadings of the parties, the Tribunal framed the following issues :

"1. Whether Joginder Singh s/o Hazara Singh died in a motor vehicle accident on 6.4.1990 due to injuries sustained by him while driving truck No. HYE9273 near

village Gajju Majra as mentioned in para No. 24 of the petition ? OPA.

2. Whether the claimants are entitled to the grant of compensation ? If so, to what extent and from whom ? OPA.

3. Whether the claim petition is not maintainable as alleged ? OPR.

4. Relief."

4. While deciding issue No. 1, the Tribunal held that Joginder Singh died in the motor vehicle accident due to injuries sustained by him while driving truck No. HYE9273. The contention of the appellant Company in terms whereof issue No. 3 was framed was also repelled and it was held that Joginder Singh did not die due to his own negligence. Under issue No. 2, the Tribunal held the respondentclaimants entitled for a sum of Rs. 1,43,000/ as compensation. Aggrieved, the Insurance Company has preferred this appeal whereas the claimants have filed their crossobjections.

5. At this stage, it may be stated that along with the appeal the Insurance Company has moved C.M. No. 5837CII of 1993 under Order 41 Rules 27 and 33 read with Section 151 CPC for adducing additional evidence. Along with this application, two documents (Annexures R1 and R2) are sought to be placed on record. Vide letter dated 19.8.1992 (Annexure R1), a surveyor agency on verification from the District Transport Officer, Gurdaspur has found that no driving licence was issued by the said Office to Joginder Singh. Another communication dated 11.8.1992 (Annexure R2) is the letter which the appellantcompany is stated to have sent to the Surveyor Agency requesting the latter to get the validity of the driving licence of Joginder Singh, a photocopy of which enclosed with the letter, verified from the authorities concerned at Gurdaspur.

6. Relying upon the letters (Annexures R1 and R2), learned counsel for the appellantcompany vehemently contends that since Joginder Singh was not possessing a valid driving licence and was driving the truck on the basis of an alleged forged driving licence, the terms and conditions of the Insurance policy stood violated, therefore, no liability could have been fastened upon the Insurance company. On the other hand, learned counsel for the respondent claimants contends that though a specific preliminary objection was taken by the appellantcompany in relation to the genuineness and validity of the driving licence of deceased Joginder Singh, however it failed to lead any evidence in support thereof. It is, thus, contended that the appellantcompany cannot be permitted to fill up the lacuna in its case by producing additional evidence.

7. In my view, what is required to be determined is the evidentiary value of documents Annexures R1 and R2. It may be noticed that the appellantcompany asked the surveyors agency to verify the genuineness of the driving licence of the deceased Joginder Singh on 11.8.1992 and the verification was allegedly carried out by the said surveyors agency within a week, namely, on 19.8.1992

(ref. Annexure R1). However, no explanation whatsoever is forthcoming as to why these documents could not be produced before the Tribunal, more so when the Award was passed after a period of about six months. Similarly, the contents of letter dated 19.8.1992 (Annexure R1) are as vague as possible. There is no written communication from the office of DTO, Gurdaspur to the effect that the driving licence of Joginder Singh was invalid. In this view of the matter, no credence can be given to documents Annexures R1 and R2. Concededly, if both these documents are rejected, there is not even an iota of evidence led by the Insurance Company in support of its contention that the driving licence of deceased Joginder Singh was invalid. No other ground has been urged in support of the appeal. Consequently, I do not find any merit in the appeal preferred by the Insurance company and dismiss the same.

8. Coming to the crossobjections preferred by the claimants, it is contended by learned counsel for the claimants that the deceased was the sole bread earner of family consisting of four children and wife, the Tribunal, however, has deducted one third income assuming that it was being spent by the deceased on personal expenses.

9. Relying upon a judgment of this Court in the case Joginder Kaur and others v. State of Haryana, 1991 ACJ 374, learned counsel contended that the annual dependency would vary depending upon the facts of each case. According to him, when the deceased was to look after four children and his wife, he could not have afforded to spend one third of the salary on himself. It is also contended that no compensation towards consortium and/or funeral expenses incurred by the respondent claimants have been awarded by the Tribunal.

10. Having regard to the facts and circumstances of this case, especially the age of the four children who must have been students at that time, there appears to be substance in the contention of the claimants. In my view, the deceased could at best, spend one fourth of his salary on personal expenses. In this manner, the annual dependency of all the claimants comes at the rate of Rs. 12,800/ and by applying the multiplier of 15 as applied by the Tribunal, the respondent claimants are held entitled for a sum of Rs. 1,92,000/ as compensation. In addition, respondent No. 1 is also entitled to a consortium of Rs. 15,000/ as well as Rs. 5,000/ towards funeral expenses of the deceased i.e. a total compensation of Rs. 2,12,000/.

Their crossobjections to the extent above are accepted and the impugned award dated 1.2.1993 is modified. The respondent claimants shall also be entitled to claim interest at the rate of 6% per annum on the enhanced amount of compensation from the date of filing the claim petition till its realisation as also costs of Rs. 3000/.