
(2001) 01 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 971 of 1993

United India Insurance Company Ltd.	APPELLANT
Vs	
Surjit Singh Sodhi	RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 147(3), 149, 149(4)
Penal Code, 1860 (IPC) — Section 279, 304

Citation : (2001) 2 ACC 180 : (2001) ACJ 1551 : (2001) 2 RCR(Civil) 239

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. N.K. Khosla, for the Appellant; Mr. Raman Mahajan and Mr. Harsh Aggarwal, for the Respondent

Judgement

R.L. Anand, J.—This judgment disposes of FAO No. 971 of 1993 titled United India Insurance Company Ltd. v. Surjit Singh Sodhi and others and Cross-objections No. 55-CII of 1999 filed by the claimants in the main appeal itself, as both the appeal and the cross-objections have arisen from the award dated 27.2.1993 passed by the Motor Accident Claims Tribunal, Patiala, which awarded compensation to the tune of Rs. 1,92,000/- to the claimant/respondents No. 3 to 6 along with interest @ 12% per annum from the date of the order till actual realisation. The cross-objections are to the effect that the compensation awarded by the Tribunal is on the lower side and that the interest should be awarded by the Tribunal from the date of the filing of the claim petition and not from the date of order.

2. The brief facts of the case are that claimants Sukhdev Kaur, Kiranjit Kaur, Gurbant Singh and Gurnam Kaur filed claim petition u/s 166 of the Motor Vehicle Act against Surjit Singh Sodhi (owner of the truck), Chand Singh (driver of the truck) and United India Insurance Co. Ltd. (insurer of the truck) and claimed compensation to the tune of Rs. 15 lac and the case set up by the claimants was that on 26.4.1989 Uggar Singh Sidhu, who was working as Agricultural Sub

Inspector at Civil Veterinary Hospital, Patiala, located on Jail Road, Patiala, was coming on his bicycle from Cattle Breeding Farm, for his home and when he just reached the road at about 4.45 p.m., a truck bearing registration No. CHW 3713 driven by respondent No. 3 Chand Singh came from the jail side and knocked down Uggar Singh with the cycle, as a result of which he fell on the road and received serious injuries on his person. The accident was witnessed by Jagpal Singh son of Darshan Singh and Sub Inspector Ujaggar Singh, who were following the deceased on their respective bicycles. Uggar Singh was removed to the hospital at Patiala where he expired on 27.4.1989 after admission. The accident, according to the claimants, had occurred due to rash and negligent driving of the truck by respondent Chand Singh. The deceased was born on 2.3.1950.

3. The claim petition was contested by the respondents. Respondent No. 1 (in the claim petition), who was the owner of the truck, denied the accident. However, he admitted that the truck in question was insured with the United India Insurance Company Ltd. and the insurance was w.e.f. 22.8.1988 to 21.8.1989. The truck was comprehensively insured. The driver of the truck also denied the accident, but at the same time pleaded that the accident was the result of negligence on the part of the deceased and the witnesses relied upon by the claimants are procured one. The United India Insurance Company Ltd. admitted that the truck in question was insured with it but it was contended that at the time of accident the driver of the truck was not holding a valid driving licence.

4. From the pleadings of the parties, the learned Tribunal framed the following issues :-

"1. Whether Uggar Singh died due to rash and negligent driving of respondent No. 2 ? OPA

2. If issue No. 1 stands proved, to what amount the claimants are entitled by way of compensation and from whom ? OPA

3. Whether respondent No. 2 was holding a valid driving licence at the time of alleged accident ? OPA

4. Relief.

5. On the conclusion of the trial issue No. 1 was decided in favour of the claimants and against respondent No. 2. Issue No. 2 was partly decided in favour of the claimants and it was held that the claimants are entitled to the compensation to the tune of Rs. 1,92,000/- along with interest from the date of the passing of the award. Issue No. 3 was decided against the respondents and it was held that respondent No, 2 was holding a driving licence at the time of accident. Resultantly the claim petition was partly allowed.

6. Aggrieved by the award of the Tribunal, the present appeal by the Insurance Company and cross-objections by the claimants. In the appeal it has been

prayed by the Insurance Company that the award of the Tribunal be reversed and in-cross-objections the claimants have prayed for enhancement of compensation.

7. I have heard Mr. N.K. Khosla, Advocate, on behalf of the appellant, Mr. Raman Mahajan, Advocate, for respondent No. 1 (respondent No. 1), Mr. Harsh Aggarwal, Advocate for the claimants/cross-objectors and with their assistance have gone through the records of this case.

8. Before me the award of the Tribunal has been challenged by the Insurance Company on the ground that it is proved on the record that Chand Singh (driver of the offending truck) alias Harchand Singh, who was one and the same person, was not holding a valid driving licence at the time of accident and since the owner of the truck has committed a breach of the policy, therefore, the Insurance Company is not liable to pay any compensation. Mr. Khosla elaborated his argument by stating that it is one of the terms of the policy that the driver of the vehicle must have a valid driving licence and if that aspect of the case is proved, then alone and alone Insurance Company would be liable to pay the compensation. In support of his contention, the learned Counsel for the appellant relied upon Kashi-ram Yadav and another v. Oriental Fire and Genl. Ins. Co. Ltd., 1989 ACJ 1078 in which it was held that if there is a breach of the conditions of the policy and the insured with the knowledge entrusted the vehicle to a person who did not have a licence and caused the accident, in such a situation, there is a breach of the condition of the policy and the Insurance Company is exempted from the liability.

9. On the contrary, the learned Counsel appearing on behalf of the owner submitted that it is proved on the record that Chand Singh alias Harchand Singh had a valid driving licence. This driving licence, which was issued in favour of Chand Singh, was seen by the previous owner Baldev Singh, who appeared as RW2 in this case and RW3 Surjit Singh. This was issued by Delhi Office. The previous owner as well as the present owner of the truck were satisfied that Chand Singh had been issued a driving licence, therefore, the vehicle was entrusted to him for driving. No sane person would entrust a costly vehicle like truck to a person who had no driving licence. This aspect of the case has not been verified by the insurance company which only confined the inquiry from the office of Licensing Authority, Dehradun. Thus no breach has been committed on the part of the owner of the vehicle and the Insurance Company has failed to discharge the onus that Chand Singh was not holding a valid driving licence. Since the Insurance Company had undertaken to indemnify the owner, therefore, the appeal has no force.

10. The learned Counsel appearing on behalf of claim ants/cross-objectors submitted that the claimants are the third party. They were never the privy to the agreement which was executed between the Insurance Company and the owner of the vehicle. Since they are strangers to the contract, therefore, they have the right to claim compensation both from the owner as well as the

Insurance Company and if ultimately it is found that owner of the vehicle has committed any breach of the policy, he may reimburse to the Insurance Company. But so far as the appellant-Insurance Company vis-a-vis claimants is concerned, it has no case and it has to pay the compensation to the claimants irrespective of the fact whether Chand Singh driver was holding a valid driving licence or not. Mr. Aggarwal submitted that stranger to a contract can sue if he is benefited by any contract. Since the Insurance Company had undertaken to cover third party risk and the deceased was a third party, therefore, the claimants have a successful cause of action in their favour against the insurance Company as well as against the owner and driver of the vehicle. Some case law has also been cited on behalf of the claimants, which I will deal in the subsequent portion of this judgment but at this juncture I must say that the present appeal deserves to be dismissed while the cross-objections are supposed to be allowed in part as the Tribunal has not granted interest to the claimants from the date of the filing of the claim petition.

11. First of all, let us see on the basis of which evidence the Insurance Company is saying that the owner of the vehicle has committed breach of the conditions of the policy. The Insurance Company examined K.L. Sharma, Clerk, Licensing Authority, Dehradun on commission, who stated that licence was not issued by their office in favour of Chand Singh alias Harchand Singh. As against this, Baldev Raj RW2 and Surjit Singh RW3, the previous owner and the present owner of the truck deposited that Chand was having a licence issued from Delhi Office and they saw the driving licence of Chand Singh before being employed him as driver in the year 1983 by the previous owner and in the year 1986 by the present owner. What is a breach so as to hold that there was a breach of the terms of the policy on the part of the owner? As I understand, breach means a wilful violation of a condition which is imposed upon a contracting party under the instrument of contract. Every violation may not be a breach in the legal sense until there is an intention to commit that breach. The act and the mind of the persons must go together for the desired result before it is said that a person has committed breach of the conditions of the contract. Negligence or mere lapse cannot be equated with wilful violation. Truck is a costly vehicle running into lacs. The owner of the truck is supposed to give wages/salary to the driver and no sane person would like to commit a breach by handing over the vehicle to a person who is not having a valid driving licence. Under the Motor Vehicle Act there is no particular type of responsibility fixed upon the owner of a vehicle that he before engaging a driver should make a particular type of inquiry from the office of the Licensing Authority. However, it should be said that there must be reasonable care which must be adopted by the owner of the vehicle such as the owner must see that original licence. If apparently the driving licence shows that it has been issued by a Licensing Authority which has signed the document and has put its seal, it is enough compliance. Further, an owner in a given circumstance can take test of such driver who is going to be engaged. One vigilant owner can go to the extent even by getting the antecedents of such

driver verified from a particular police station. Some enquiries can also be made as to whether any criminal proceeding under Sections 279/304A/336 IPC are pending against such driver. It might be possible that Chand Singh might have got issued driving licence from Delhi Office and subsequently he might have got issued a licence from Dehradun Office. The Insurance Company has not taken any efforts to examine any witness from Delhi office to rebut the definite stand of RW2 Baldev Singh and RW3 Surjit Singh. I have already stated above that RW3 Surjit Singh had not committed any breach of the policy when Chand Singh was engaged as driver of the vehicle and in this view of the matter the judgment relied upon by the learned Counsel for the appellant is not applicable to the facts in hand.

12. Assuming for the sake of argument that Chand Singh @ Harchand Singh was not holding a valid driving licence or take a person whose driving licence was a fake one, but it has been validly endorsed by the Licensing Authority and such holder of the driving licence caused an accident. Whether the claimants are entitled to claim compensation against the Insurance Company being strangers to the contracted executed between the Insurance Company and the insured and what is the intention of the legislature on this aspect ? This Court is of the opinion that so far as the third party or heirs of the third party are concerned, they are not bound by any privity of contract between the Insurance Company and the insurer. Since the Insurance Company has covered the risk of third party under the policy issued to the insured and since the third party has become beneficiary under the contract, therefore, the third party has successful cause of action. If there is any breach between the insured and the Insurance Company, let the contracting party should suffer. If the owner of the vehicle has committed breach by employing a person who was not holding a valid driving licence, let the insured may reimburse the Insurance Company. But so far as the rights of the third party are concerned, it should not be taken away merely on the ground that the owner of the vehicle has not employed a person with a good/valid driving licence. This type of controversy came up for consideration before various High Courts. Before I cite the case law, it will be appropriate for me to refer to the provisions of Sections 149(4) and 165 Of the Motor Vehicle Act. According to Section 149(4) of the said Act where a certificate of insurance has been issued under sub- section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect.

13. In *G. Sobha and others v. Sunil Kamar Saliu and others*, 2000 (1) Ken 54 7, the Hon'ble Orissa High Court has considered the provisions of Section 149(4) of the Motor Vehicles Act and it was observed that when a driver is not having a necessary driving licence, keeping in view the policy of the legislature as contained in Section 149(4) of the Act, it will be appropriate to direct that the

compensation amount shall be paid by the Insurance Company to the claimants and if ultimately it is found that the driver did not have necessary driving licence, necessary directions can be issued by the Claim Tribunal for reimbursing the Insurance Company. In para No. 8 of the judgment, it was held as follows :

"The next question is as to whether this amount should be paid by the Insurance Company, which is the insurer in respect of both the vehicles, It appears that no specific issue had been framed on this aspect. It may be necessary for the Insurance Company and the owners of both the vehicles to adduce further evidence on this aspect which is required to be determined afresh by the Claims Tribunal. The learned Counsel for the claimants-appellants submitted that the question as to whether both the owners would be liable or the Insurance Company being their common insurer would be liable is ultimately a matter between the two owners and the Insurance Company. He has submitted that keeping in view the principles envisaged in Section 149(4) of the Act, the Insurance Company can be asked to pay the amount to the claimants and thereafter depending upon the finding of the Tribunal it can claim reimbursement from both the owners or either or the owners. In the present case, the counsel for the Insurance Company had submitted that the drivers of the vehicles did not have valid driving licence. It is ultimately found that the Insurance Company is not liable for the entire amount, necessary direction for reimbursement can be issued by the Claims Tribunal. Keeping in view the policy of the legislature as contained in Section 149(4) of the Act, it would be appropriate to direct that the compensation amount of Rs. 1,80,900/- should be paid by the Insurance Company to the claimants and if ultimately it is found that the drivers did not have necessary driving licence, necessary directions can be issued by the Claims Tribunal for reimbursing the Insurance Company."

14. I am in concurrence with the view of Hon'ble Orissa High Court. After all the provisions of Motor Vehicles Act should be interpreted and stretched in such a manner that the Law Courts/Tribunals should protect the interest of the third party who is totally innocent in the matter of accident. If the rights of third party are defeated under the so-called "breach" of the term of the policy, there will be a chaos. If the Law Courts would be detracting their hands in such a situation by not coming forward for the risk of the victims, the victims or their heirs will become helpless spectators. Eventualities can come that a shrewd owner of a vehicle may transfer the same to a third party leaving the heirs of the deceased in dilemma. Invariably the drivers of the vehicles have no means to pay the compensation which might be granted by the Tribunals u/s 166 of the Motor Vehicles Act. This is a complex problem which has to be sorted out in such a manner that the rights of the third party or the dependents of the third party must be respected. They cannot be allowed at the mercy of their relations in the event of non- giving of any compensation. The Insurance Companies have to play a positive and constructive role when they undertake to indemnify the insured against third party risk. The Insurance Companies should enquire from

the owner of the vehicle about the name of the driver who was on the wheels at the time of issuance of insurance certificate. Insurance companies at that time can take copy of the driving licence. Within a reasonable time they can make an enquiry from the Licensing Authority as to whether the licence has been validly issued in favour of particular person or not. The moment information is received in the negative, they can inform the insured that policy will not remain valid as the driver is not having a valid driving licence. The Insurance Company can issue provisional certificate for a limited period calling the insured to give a certificate of the Licensing Authority that such and such person (driver) is holding a valid driving licence. Law must be taken to its judicial proportions. Here the legislature, in my opinion, has also some duty to perform why a suitable amendment has not been made in the Act that Insurance Company is not only supposed to indemnify the owner of the vehicle but also to indemnify against all those accidents which might be caused in relation to the vehicle insured. In this manner, the rights of the third party will be fully protected. We all know that hundreds and thousands vehicles are daily coming on the road. The rate of accidents is alarming and is increasing day by day. In these circumstances, it is the responsibility of all of us including the legislature and judiciary that we must protect the rights of the third party in such a manner that those rights should be not defeated under the feeble pleas of alleged "breach".

15. In Divisional Manager, New India Assurance Company Limited, Ongole Vs. Tumu Gurava Reddy and Others, it was observed in para No. 24 of the judgment by his Lordships of Andhra Pradesh High Court, after taking into consideration various case law, as follows :

"24. Following the above said judgment, I have to necessarily hold that in the facts and circumstances of this case, the contention of the Insurance Company that there was no valid entrustment of the vehicle has to be rejected. Consequently, the insurer is held liable for payment of the compensation even though the driver was found to be possessing fake driving licence."

In this judgment His Lordship followed the findings of Hon"ble Supreme Court given in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, 1987 ACJ 411 (SC). Reliance can also be placed on a judgment of Hon"ble Division Bench of this court National Insurance Co. Ltd, v. Sudia Singh and others, 1994(1) P.L.R. 140:1994(1) KRR 439 (P&H)(DB), where it was observed that if a licence is renewed though originally it was a fake licence, it gets its validity and in such a situation the Insurance Company would be liable to reimburse the insured if accident was caused by the driver and employee of the insured. One more judgment reported as National Insurance Co. Vs. Prem Narain Sahu, also requires consideration and in para No. 6 of the judgment it was observed as follows :-

"6. In Champa Devi and Others Vs. Ram Sarup and Others, a claimant was held en-titled to compensation and it was observed that he is not to be so deprived merely because the driver was found to be without a licence Again in National

Insurance Company v. Sucha Singh (supra) a fake licence was got renewed. It was held that this would fasten liability on the Insurance Company. In Oriental Insurance Co. Ltd. Vs. Tirath Kaur and Others, Insurance Company failed to prove by leading positive evidence that the driver had no valid licence. It was held that insurance Company would be liable. It is for the Insurance Company to prove that the driver had no valid driving licence. Such is a view expressed in Lalchand Vs. Kanta and Others, . Again in New India Assurance Co. Ltd. Vs. Heera Singh and Others, the argument raised was that the driver of a vehicle was a minor and, therefore, he could not be deemed to be holding a valid licence. Interim award was passed against such driver. In New India Assurance Co. Ltd. v. K.N. Bhatnagar, 1995 ACJ 223 (Pun) & liar) the driver of the vehicle did not take the ignition key with him. He left the vehicle in control of the cleaner. The Insurance Company was held liable when accident took place when vehicle was put in motion. In The Oriental Insurance Co. Ltd. Vs. Abdul Sahid Khan and Others, the Insurance Company wanted to avoid its liability by taking a plea that the driver had no licence at the lime of accident. The first information report indicated that the helper without the permission of driver had moved the vehicle. This caused the accident. The Insurance Company was held liable. In view of the aforementioned decisions the conclusion to be drawn is that merely because a driver is without a valid licence the Insurance Company cannot escape liability. In the present case the driver had a licence but all that has been stated is that this was not meant for a commercial vehicle. In para No. 16, of the award given by the Tribunal, it has been categorically stated that there was authorisation to drive a vehicle and merely because there was some insertion or deletion prohibiting the driver from driving a transport vehicle would not absolve the insurance company, in any case, a jeep is not be considered a transport vehicle in the sense in which the Insurance Company wants it to be read. The conclusion arrived at by the Tribunal that Insurance Company is liable cannot be faulted."

16. In FAO No.3180 of 1999 titled National Insurance Co. v. Surjeet Kaur and others, this Court observed that Insurance Company is liable to pay the compensation to the third party if it has undertaken to indemnify the insured and the company can recover the amount from the owner if the Tribunal so orders.

17. Resultantly the appeal filed by the appellant i.e. United India Insurance Company Ltd. is hereby dismissed with no order as to costs.

18. Reverting to the cross-objections, it was argued by the learned Counsel for the cross-objectors that the compensation of Rs. 1,92,000/- awarded by the Tribunal is on the lower side. He submitted that it is proved on the record that deceased Uggar Singh was earning Rs.2,101/-per month and the carry home salary of the deceased was Rs. 1,881/- per month. Apart from that, he was getting Rs. 300/- house rent allowance. The Tribunal has wrongly calculated the annual dependency of the claimants at the rate of Rs. 12.000/-. The multiplier of 16 years applied by the Tribunal is also on the lower side.

19. I do not subscribe to the arguments of the learned Counsel for the claimants/ cross-objectors. The deceased was a person of 42 years. There always remains uncertainties of life. The deceased was the earning member of the family. He was supposed to go to the office in good clothes. He has to keep up his appearance before the public. The carry home salary of the deceased was only Rs. 1,881 /- per month and after deducting the personal expenses the annual dependency of the claimants has been rightly calculated at Rs. 12,000/- per annum. Multiplier of 16 years has been rightly applied. Thus the amount of compensation has been rightly assessed at Rs.1 ,92,000/-.

20. So far as the interest part is concerned, the Tribunal ought to have awarded interest from the date of the filing of the claim petition i.e. 2.6.1989 till actual payment is made. Therefore, the cross-objections are allowed to a limited extent by holding that the appellant Insurance Company shall pay interest @ 12% per annum from the date of the filing of claim petition i.e. 26.8.1989 till payment. The assessed/enhanced compensation shall be paid by the Insurance Company within one month from the receipt of the copy of the judgment.

The net result is that the appeal is dismissed with no order as to costs and the cross-objections are partly allowed, as indicated above. No separate costs are being awarded to the claimants in the cross-objections.

21. Appeal dismissed.