
National Insurance Co. Ltd. Vs Raj Rani and Others

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 4, 2008

Acts Referred:

Motor Vehicles Act, 1988 & Section 149, 66

Citation: (2009) ACJ 1684 : (2008) 152 PLR 539 : (2009) 1 RCR(Civil) 557

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

National Insurance Company Ltd. i.e. appellant has filed this appeal against the award dated 29.7.2008 passed

by the Motor Accident Claims Tribunal, Kurukshetra whereby claimants have been awarded a sum of Rs. 4,53,000/- along with interest @ 7.5%

per annum from the date of filing of claim petition till realization of the amount awarded. It was further ordered that the liability to pay the amount of

compensation shall be joint and several of owner and driver of Truck in question with appellant Insurance Company.

,2. The facts of the case are that one Satish Kumar who was driving Motor-cycle bearing No. HR-03-F-9636 met with an accident with a truck

bearing No. HR-58-4515. Satish Kumar sustained multiple serious and grievous injuries on his head and later on died in the hospital because of

injuries caused to him in the said accident.

3. The claim petition filed by the claimants was contested by respondent Nos. 5 and 6 (i.e. owner and driver of Truck No. HR58-4515) stating

that no accident had taken place with the truck. They also took the plea that the said truck was insured with the appellant and in case any

compensation is to be paid, the same is to be paid, by the appellant.

4. The appellant Insurance Company took the stand that the truck was being plied in contravention of the policy and claimants are stopped from

filing the claim petition. On merits, appellant took similar pleas that no accident had taken place with the aforesaid truck. On these pleadings

following issues were framed by the Tribunal:

1. Whether the accident in question resulting into death of Satish Kumar took place on 31.12.2006 was because of rash and negligent driving of

Sharwan Kumar, respondent No. 1 while driving truck No. HR-58-4515, if so, its effect? OPP

2. If issue No. 1 is proved in affirmative, whether claimants are entitled to receive any compensation, if so, what amount and from whom? OPP

3. Whether the petition is not maintainable in the present form? OPR

4. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR

5. Whether the claimants have no locus standi to file the claim petition? OPR

6. Whether truck in question was being driven in violation of terms and conditions of the insurance policy, if so, its effect? OPR

7. Relief.

5. Vide impugned award, the Tribunal held that claimants are entitled to receive Rs. 9,06,000/- as compensation on account of death of Satish

Kumar. However, the Tribunal further held that deceased Satish Kumar as well as Sarvan Kumar, driver of the offending truck were equally rash

and negligent and both contributed equally to the cause of accident.

6. Thus it was held that the claimants are entitled to receive Rs. 4,53,000/- as compensation on account of death of Satish Kumar. The liability to

pay the said amount of compensation was held to be joint and several with appellant.

7. In the present appeal, the Insurance Company has challenged the impugned award mainly on the ground that the Tribunal has erred at law while

holding the Insurance Company liable for payment of compensation to the claimants as it has been proved on record that the truck in question was

being driven without obtaining any route permit and as per Section 66 of the Motor Vehicles Act, no owner of any transport vehicle is permitted to

ply the same in any public place, without permit granted by the prescribed authority and therefore, allowing the offending truck without any permit,

the insurance violated the terms and conditions of the Insurance policy and as such, the appellant Insurance Company has no liability to pay the

amount of compensation to the claimant. In support of his argument learned Counsel for the appellant has placed reliance upon a judgment of the

Hon"ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, .

8. I have heard learned Counsel for the appellant and perused the record. However, I find no force in the contention raised by the learned Counsel

for the appellant. There is no dispute with the proposition of law as canvassed by learned Counsel for the appellant. However, in the case in hand,

the appellant has failed to prove that the truck in question was being plied by the insured in violation of the terms and conditions of the policy. The

Tribunal has recorded a finding that, a specific issue was framed to the effect that whether truck in question was being driven in violation of terms

and conditions of the insurance policy and the onus to prove this issue was upon the appellant, and since the appellant has failed to produce any

evidence to prove this issue, the finding on this issue were held against the appellant.

9. The contention of the learned Counsel for the appellant that it was for the truck owner to produce the permit and since the same has not been

produced despite instructions of the Tribunal, the inference should be drawn against the truck owner is also without any force.

10. The appellant cannot be allowed to take benefit of its own wrong. The onus to prove this issue was upon the appellant which could not be

proved, as no evidence was led by the appellant. More over, in the case of National Insurance Company Limited Vs. Kamlesh Kaur and Others,

this Court held that as per provisions of Section 149(2) of the Motor Vehicles Act, 1988 in case of breach of conditions of policy the onus is upon

the Insurance Company to prove the same. In this case, it was for the Insurance Company to prove that no permit was obtained by the owner of

the vehicle or any route permit for the goods vehicle which was required in the State of Haryana. However, the appellant has not been able to

produce any evidence, therefore, the appellant cannot avoid its liability which has arisen in the capacity as insurer of the vehicle.

11. While passing the impugned award, the Tribunal held that there is nothing on the file that the truck in question was being driven in violation of

the terms and conditions of the insurance policy. The Tribunal also found that onus to prove this issue was upon the appellant and the appellant has

failed to prove this issue, as no witness or document has been produced on record by the Insurance Company.

12. Thus, this issue was also decided against the appellant. I find no illegality or infirmity in the impugned award of the Tribunal.

13. No merit.

Dismissed.