United India Insurance Co. Ltd. Vs Malwa Bus Service (P) Ltd. and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 2, 1997

Acts Referred: Evidence Act, 1872 â€" Section 65, 74

Citation: (1999) ACJ 1221

Hon'ble Judges: T.H.B. Chalapathi, J; R.S. Mongia, J

Bench: Division Bench

Advocate: Munishwar Puri, for the Appellant; L.M. Suri, Deepak Suri and C.S. Pasricha, for the Respondent

Judgement

T.H.B. Chalapathi, J.
This appeal under Clause X of the Letters Patent arises out of the judgment of the learned single Judge in F.A.O.

No. 428 of 1983,

2. One Samma Singh who was employed as time-keeper-cum-checker with Malwa Bus Service (P) Ltd., (the respondent No. 1) died in a motor

accident that took place on 19.3.1980 when he was travelling in a bus bearing No. PUU 1466 belonging to the respondent No. 1. The rear

portion of the bus struck against dumper bearing No. PUA 8779 belonging to Jolly Contractors. The dependants of the deceased filed an

application u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") before Motor Accidents Claims Tribunal, Amritsar

claiming a compensation of Rs. 1,00,000. The Tribunal by its judgment dated 19.4.1983 awarded a sum of Rs. 57,600 as compensation but

limited the liability of the insurance company to the tune of Rs. 5,000 only and directed the owner and driver of the bus to pay the balance of the

amount. Aggrieved by the said judgment of the Tribunal the owner of the bus and the driver preferred the first appeal. The learned single Judge

held that the insurance company is liable for the payment of the entire amount of compensation on the ground that the insurance policy which is

marked Exh. R-1 was not admissible in evidence as the conditions of Section 65 of the Indian Evidence Act were not met with, therefore, the

same cannot be read in evidence. The insurance company filed the present appeal.

3. The learned Counsel for the appellant argued that the learned single Judge erred in holding that the policy of insurance which is marked as Exh.

R-1 is not admissible in evidence and according to him liability of the insurance company at the relevant time was limited to only Rs. 5,000 and,

therefore, the Tribunal rightly restricted the liability of the insurance company to Rs. 5,000 only. It is, on the other hand, contended by the learned

Counsel representing respondent Nos. 1 and 2 that a copy of policy of insurance is not admissible in evidence and, therefore, insurance company

failed to adduce evidence to show that the liability is restricted under the terms of the contract and, therefore, the judgment under appeal does not

require reconsideration.

4. The controversy in regard to the admission of the copy of the policy of insurance is resolved by a recent judgment of the Full Bench of this

Court in United India Insurance Company Ltd. Vs. Kamla Rani and Others, , wherein it has been held that the policy of insurance is a public

document falling u/s 74 of the Indian Evidence Act and, therefore, a copy of the same is admissible in evidence. Therefore, the reasoning of the

learned single Judge that the requirements of Section 65 of the Evidence Act are not fulfilled cannot be accepted. The copy of the policy is

admissible in evidence and it is, therefore, to be seen whether the liability of the insurance company is limited. The copy of the insurance policy

Exh. R-1 clearly shows that the liability of the insurance company is limited to such amount as is necessary to meet the requirements of the Motor

Vehicles Act, 1939. Thus, it is clear that the liability of the insurance company is limited to the requirements of the Motor Vehicles Act, 1939. The

accident took place in the year 1980. Section 95 (2) of the Motor Vehicles Act, 1939 at the relevant time read as follows:

(2) Subject to the proviso to subsection (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following

limits, namely-

(a) xxx xxx xxx

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all.

Admittedly the deceased was employed as time-keeper-cum-checker with the respondent No. 1 who is the owner of the bus. He was travelling in

the bus on duty. AW 3 who is the cashier of the respondent No. 1 in his evidence clearly stated that the deceased was in employment of the

respondent No. 1 as checker. There was no cross-examination of this witness by the insurance company. Since the deceased was in employment

of the respondent No. 1 the compensation payable on account of the death of the deceased according to the provisions contained in Section 95

(2) of the Motor Vehicles Act, 1939, was Rs. 50,000. The insurance company is, therefore, liable to pay the said amount as compensation to the

claimants due to the death of the deceased. The learned single Judge in the impugned judgment awarded a sum of Rs. 57,600 but the liability of the

insurance company is restricted to Rs. 50,000 under the Act. Accordingly, we modify the judgment of the learned single Judge and restrict the

liability of the insurance company to Rs. 50,000. If the insurance company has paid the entire amount to the claimants in pursuance of the judgment

of the learned single Judge it may recover the same from the respondent Nos. 1 and 2 only and they shall not seek any restitution of the amount

from the claimants, Accordingly, the appeal is allowed partly and the judgment of the learned single Judge is modified to the extent indicated

above. No costs.