(1998) 11 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 55 of 1986

National Insurance Company Ltd.		APPELLANT
	Vs	
Dashrath Bhai		RESPONDENT

Date of Decision: Nov. 19, 1998

Acts Referred:

- Motor Vehicles Act, 1939 - Section 95(1)

Citation: (2001) ACJ 863 : (1999) 123 PLR 706

Hon'ble Judges: Jawahar Lal Gupta, J

Bench: Single Bench

Advocate: L.M. Suri and Arvind Kashyap, for the Appellant; S.C. Chhabra, for the Respondent

Final Decision: Allowed

Judgement

Jawahar Lal Gupta, J.

On April 14, 1983 a milk van PAL) 2752 hit a tree. Two persons who were travelling along with the driver died. One of these persons was Mr. Vipin Shah who was working as a Quality Control Officer with the Guru Nanak Dev Dairy. He succumbed to the injuries and died. The parents and the brother of the deceased filed a petition u/s 110-A of the Motor Vehicles Act, 1939 claiming a compensation of Rs.4,10,000/-. The Tribunal assessed the compensation at Rs. 1,50,000/-. It was held that this amount was payable by the Insurance Company. Aggrieved by the award of the Tribunal and insurer has filed the present appeal.

2. The solitary contention raised on behalf of the appellant is that there is no liability of the insurer to pay on account of the death or injury to a passenger in a milk van. Mr. Lalit Suri, learned counsel for the appellant, has relied upon the judgment of a Full Bench of this Court in Oriental Fire and General Insurance Company Limited v. Gurdev Kaur and Ors. (1967) 69 PLR. 461 in support of his submission. On behalf of the respondent-claimants it has been urged that the Insurance Company is liable and

reliance has been placed on the decision of a learned Single Judge of the Patna High Court in Kalawati Devi Vs. Zawahirul Nisan and Another, .

3. Nobody has appeared on behalf of the insured-the owner of the vehicle. Still further even on behalf of the claimants it has not been shown that under the terms of the policy the insurer was liable in respect of the passengers travelling in the vehicle. Moreover, in Gurdev Kaur''s case (supra) the Full Bench has clearly held that unless the risk in respect of the deceased is covered or required to be covered u/s 95(1)(b) of the Motor Vehicles Act, 1939, the insurer is not liable to pay compensation on account of death or injury to a passenger in a goods vehicle. In view of this authoritative pronouncement of the Full Bench, there is no alternative except to allow the appeal and to hold that the liability shall be of the owner of the vehicle and not that of the Insurance Company.

4. Before parting with the case, another fact deserves to be noticed. Along with Mr. Vipin Shah another person Mr. Gurcharan Dass was also travelling. Even the claim in respect of the death of Gurcharan Dass was tried by the Motor Accident Claims Tribunal. In that case the Tribunal had taken the view that the insurer was not liable. FAO No. 269 of 1985 was filed by the claimants before this court. It has been pointed out by Mr. Suri that vide offer dated May 22, 1989 the finding of the Tribunal that the insurer was not liable, was upheld. Thus, it appears that the Tribunal had taken two contradictory views in respect of one accident. This Court had confirmed the view taken by the Tribunal in Gurcharan Dass''s case. No reason for taking a different view in this case is made out.

5. Mr. Chhabra has placed reliance on the decision in Kalawati Devi''s case (supra). The view taken in this case is contrary to that of the Full Bench decision of this Court. I am bound by the decision of the Full Bench. Thus, the respondent-claimants can derive no advantage from the Single Bench decision of the Patna High Court.

6. No other point has been raised.

7. In view of the above, the appeal is allowedit is held that the liability in respect of the compensation awarded by the Tribunal shall be of the owner of the vehicle and not that of the insurer. In the circumstances there will be no order as to costs.