(1998) 11 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 1694 of 1997 (O and M)

United India Insurance Company Limited	APPELLANT
Vs	
Neena Tandon etc.	RESPONDENT

Date of Decision: Nov. 17, 1998

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (1999) ACJ 1066 : (1999) 121 PLR 217 : (1999) 2 RCR(Civil) 457

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: D.P. Gupta, for the Appellant; K.S. Brar, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Jhanji, J.
This appeal is directed against the award of the Motor Accident Claims Tribunal allowing the claim petition filed by the widow of Capt. A.L. Tandon who died in accident.

2. Briefly, the facts of the case are that on 6.9.1991, Capt. A.L. Tandon was travelling in his white maruti car bearing registration No. CHK-2437. At about 4 P.M. when he reached on Talwandi-Moga road within the jurisdiction of P.S. Sadar Moga, a combine came from the side of Moga being driven by respondent No. 6. The combine went out of control and struck against the maruti car, as a result of which Capt. A.L. Tandon sustained serious injuries and died. The combine which was bearing registration No.PB-11A-2464, was apprehended. Claimant-widow claimed compensation to the tune of Rs. 7,00,000/- alongwith interest at the rate of 18 per cent. The owner of the combine and also the driver filed written statement denying the allegations made in the claim petition. United India Insurance Company being respondent No. 4, filed written statement taking preliminary objection that the

driver of the vehicle involved in the accident was not having a valid driving licence. It was also contended that the accident occurred due to negligent and rash driving by the driver of maruti car. Insurance Company however, admitted that the combine was insured with it and the policy had been taken out by Mohinder Singh and Nachhattar Singh, co-owners of the combine. The learned Motor Accident Claims Tribunal on appreciation of evidence brought on record found that the death of Capt. A.L Tandon was on account of rash and negligent driving of combine by its driver. The issue as to whether the driver of the combine had a valid driving licence, was decided against the Insurance Company. On finding that the deceased at the time of his death was 63 years of age, getting Rs. 8,500/- as salary per month and was contributing Rs. 5,600/- to his family, a multiplier of 5 was applied. The amount of compensation thus, was determined at Rs. 3,36,000/- Hence, the present first appeal by the Insurance company.

3. Learned counsel appearing on behalf of the Insurance Company has contended that the driver was not holding a valid licence inasmuch as the licence held by him was only for driving a scooter. According to the counsel the driving of a combine by a person not holding licence to drive such a vehicle was a breach of the policy condition and as such no award could have been passed against the Insurance company. Against this, it has been contended by the counsel for claimants that the insurance company has failed to prove on record that the driver was not holding a valid driving licence. It is contended that the licence has not been got produced on record and in absence thereof, it cannot be said that the driver was not holding a valid licence.

4. The only question to be decided in this case is as to whether respondent No. 6 who was shown to be driving the vehicle at the relevant time did not have a valid driving licence to drive the combine. In the written statement, the allegation of the Insurance Company was that it is not liable to pay the amount as there has been breach of the terms and conditions of the policy inasmuch as the person driving the combine was not holding a licence to drive such a vehicle. It however, was not alleged that the licence held by the driver was only for driving scooter. In order to prove that the driver was not holding licence to drive such a vehicle, burden was on the Insurance Company. In Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 91 P.L.R. 665, their Lordships of the Supreme Court in this context have observed that it must be established by the Insurance Company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Their Lordships further observed that unless the insured is at fault and is guilty of the breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise.

5. In this case, the claim petition was being contested not only by the Insurance Company but also by the owner and the driver. In case driver of the vehicle was not holding a valid licence, nothing prevented the Insurance Company to call upon the owner and the driver to produce the licence. Admittedly, the insurance company did not issue any notice either to the owner or driver to produce the driving licence. It also did not make any application to the Motor Accident Claims Tribunal causing the driver to produce the driving licence. The only evidence led by the insurance company in this regard is examination of one Sohan Lal Sharma, Junior Assistant in the office of District Transport Officer, Patiala, who deposed that the licence issued to the driver was only for driving scooter. He in his cross-examination stated that Office "maintain separate register for addition of medium or heavy vehicles on the driving licence which is to be made later on". He however, did not produce the said register. In absence of the register, it was not possible for the claimants to cross-examine the said witness on the point as to whether the driver got added any other class of vehicle in his licence, which he may have been permitted to drive. Possibility of driver possessing another driving licence from any other transport Authority also cannot be ruled out. In any case, it was for the insurance company to bring on record compelling evidence that the driver was not holding driving licence to drive the combine. Insurance Company, in my view, has failed to prove that there was a breach of the terms of the policy of insurance on the ground that the driver who was driving at the relevant time did not have a licence to drive the combine.

6. Consequently, the appeal being without any merit shall stand dismissed. No costs.