

(1994) 1 ACC 204

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Umrao Singh alias
Umra and Another

APPELLANT

Vs

Raj Singh and Others

RESPONDENT

Date of Decision: March 18, 1993**Acts Referred:**

- Motor Vehicles Act, 1939 - Section 110A

Citation: (1994) 1 ACC 204**Hon'ble Judges:** N.K. Kapoor, J**Bench:** Single Bench

Judgement

N.K. Kapoor J.

Sarv Sh. Umrao Singh and Ved Parkash, driver and owner of the vehicle respectively, have filed this appeal against the award of the Motor Accident Claims Tribunal, Bhiwani, whereby compensation of Rs. 15,000/- was awarded to the claimant and made recoverable from respondent Nos. 1 and 2 (now appellants). Respondent No. 3. Insurance Company was not held liable. This appeal was admitted by the Division Bench vide order dated December 5, 1985 against Insurance Company.

2. Briefly put, a claim petition u/s 110-A of the Motor Vehicles Act, 1939, was filed by Raj Singh seeking compensation of Rs. 40,000/- for the injuries sustained by him in a road accident that took place on 27.1.1983 in the area of village Makrani. As per version given, he was going from Kanina to village Kheri Sarwal on motor cycle No. HRC 1966 which he was driving himself. His allegation is that he was hit by truck No. HRR 8436 which was coming from the opposite side and was being driven by Ved Parkash. Umrao Singh was impleaded as owner of the truck whereas Oriental Fire and General Insurance Company as respondent No. 3. Ved Parkash and Umrao Singh denied the factum of accident or that the same took place with their truck bearing No. HRR 8436. Insurance Company resisted the claim on the ground that vehicle has been transferred before the date of the

accident and this information that the vehicle has been transferred was never given to them and hence no liability can be fastened on the Insurance Company.

3. The Tribunal framed the following issues:

(1) Whether the petitioner suffered the injuries on account of the rash and negligent driving of vehicle by respondent No. 1 Ved Parkash ? OPP.

(2) To what amount of compensation, if any, is the claimant entitled and from Whom ? OP claimant.

(3) Whether the claim petition is vague and incomplete and does not disclose any cause of action against the Insurance Company, respondent No. 3, as alleged in the written statement by this respondent ? OP Respondent No. 3.

(4) Whether the verification of the petition is defective? If so to what effect? OP Insurance Company.

On the basis of the evidence led, issue No. 1 was decided in favour of the claimant holding that he suffered injuries on account of rash and negligent driving of vehicle by Ved Parkash respondent. Under issue No. 2, the Tribunal after referring to the injuries suffered by the claimant and the amount of money spent by him on treatment assessed total compensation payable to him at Rs. 15,000/- i.e. Rs. 5000/- on account of the expenses incurred by him and Rs. 10,000/- for pain and suffering. However, the Tribunal chose to award it against respondent Nos. 1 and 2, the present appellants. Respondent No. 3 - the Insurance Company-was absolved. According to the Tribunal, the Insurance Policy Exhibit R-2 for the period from 6.4.1982 to 5.4.1983 was in the name of one Daulat Ram as owner-the insured, whereas Umrao Singh has been shown to be the owner in respect of the accident which took place on 27.1.1983. Issues Nos. 3 and 4 were not pressed and so were decided against the respondents. Resultantly, the claimant was awarded compensation of Rs. 15,000/- against the driver and owner of the defaulting vehicle along with interest at the rate of 6% per annum from the date of petition till final payment. The claim against respondent No. 3 was dismissed.

4. It is this finding of the Tribunal by which the Insurance Company has been absolved of its liability which is being challenged in this appeal. According to the appellants, the Tribunal has, indeed, erred in law in coming to the conclusion that on the date of accident i.e. 27.1.1983 the vehicle was owned by Umrao Singh. This finding, according to the appellants, has been solely recorded on account of the fact that he has been impleaded as respondent which by itself cannot be construed as implying that on the date of accident Umrao Singh was owner of the vehicle which caused the accident. According to the appellants, the vehicle bearing No. HRR 8436 was owned by one Daulat Ram who had got it insured for the period from 6.4.1982 to 5.4.1983. This factual aspect is not even denied by the Insurance Company. This being the factual position, the Tribunal erred in law in absolving the Insurance Company of its liability despite the Insurance Company

5. Admitted the vehicle was duly insured by the Insurance Company as is clear from the Insurance Policy Exhibit R-2 for the period from 6.4.1982 to 5.4.1983. There is no proof on record that on the date of accident the vehicle had been transferred by the erstwhile owner Daulat Ram in favour of Umrao Singh. The Tribunal appears to have inferred this from merely impleading of Umrao Singh as one of the respondents. Possibility that vehicle having been transferred any time after the date of accident and before filing of the claim petition cannot be ruled out. But for this there is no clear evidence on record. The Insurance Company except taking an objection that the vehicle had since been transferred and so the Company is not liable to pay any compensation, has not adduced any evidence. Whether on the date of accident vehicle stood transferred to Umrao Singh or remained in ownership of Daulat Ram has a material bearing, the determination of which will make Insurance Company liable or otherwise and so in the circumstances ought to have been examined by Tribunal more thoroughly. I accordingly accept the appeal, set aside the award of the Tribunal so far as it absolves Insurance Company of its liability and remand the case to the Motor Accident Claims Tribunal. The Tribunal will examine the matter afresh and determine the liability of the Insurance Company, if any. Due opportunity be granted to the parties to lead evidence in support of their respective contentions, i.e. whether on the date of accident the vehicle was owned by Daulat Ram or stood transferred to Umrao Singh. The parties to appear before the Motor Accident Claims Tribunal, Bhiwani, on 18.5.1993. Office to inform the respective Counsel for the parties of this order No. costs.