
(1997) 05 P&H CK 0038

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No's. 38, 39 and 338 of 1992, 1903 of 1993 and 706 of 1995

Harish Chand and Others

APPELLANT

Vs

Smt. Boti and Others

RESPONDENT

Date of Decision: May 30, 1997

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147

Citation: (1999) ACJ 1174 : (1998) 118 PLR 840 : (1998) 2 RCR(Civil) 172

Hon'ble Judges: Jawahar Lal Gupta, J; Iqbal Singh, J

Bench: Division Bench

Advocate: L.M. Suri and Deepak Suri, for the Appellant; Viney Mittal Raman Walia and S.S. Aulakh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jawahar Lal Gupta, J.

These appeals raise a common question regarding the interpretation of the provisions of Section 147 of the Motor Vehicles Act, 1988. Vide order dated April 22, 1993, the Division Bench (G.S. Majithia and A.S.Nehra, J5) had referred the following three Questions for consideration by a Full Bench :-

"i) Whether the insurance company is liable to satisfy the award made by the Motor Accident Claims Tribunal on a petition u/s 166 of the Motor Vehicles Act, 1988 filed by a person who sustained injuries while travelling in a goods vehicle?

ii) Whether the insurance company is liable to satisfy the award made by the Motor Accident Claims Tribunal on a petition u/s 166 of the Motor Vehicle Act, 1988 filed by the dependents of a person who died as a result of an accident while travelling in a goods vehicle?

iii) If the answer to Questions (i) and (ii) is in the negative, whether the insurance company is at all liable to satisfy the award made by the Motor Accident claims

Tribunal on a petition u/s 166 of the Motor Vehicles Act, 1988 filed by any person who sustained injuries while travelling in a goods vehicle or by the dependents of a person who died in an accident while travelling in a goods vehicle as owner of goods carried or otherwise?"

The matter was placed before a Full Bench. Their Lordships vide order dated December 21, 1993, returned the reference unanswered because "there is no decision yet by any Division Bench on the questions after coming into force (of) the 1988 Act". Accordingly, these appeals have been placed before this Bench.

2. The basic question that arises for consideration is whether the insurance company is liable to pay compensation in respect of death or bodily injuries to any person travelling in a goods carriage?

3. Counsel for the parties have been heard.

4. A few provisions of the Motor Vehicles Act, 1988 may be briefly noticed. Section 2 defines various expressions used in the Act. According to Section 2(7), a "transport vehicle" means "a public service vehicle, a goods carriage, an education institution bus or a private service vehicle". Section 2(14) defines a goods carriage to mean "any motor vehicle constructed or adopted for use solely for the carriage of goods or any motor vehicle not so constructed or adopted when used for the carriage of goods". Clauses (17), (24), (33), (35) and c) define expressions which inter alia relate to vehicles used for the transport of passengers. It may also be noticed that a goods vehicle was defined in Section 2(8) of the 1939 Act. Therein, it was inter alia said that the goods vehicle means "any motor vehicle... for use for the carriage of goods.... solely or in addition to passengers". The 1988 Act significantly omits the word "in addition to passengers".

5. Chapter V of the Act provides for the control of transport vehicles. Sections 72 and 74 inter alia provide for the grant of permits for vehicles which can carry passengers. Sections 77 and 79 provide for the grant of goods carriage permits. In these provisions, it has been inter alia provided that goods may be carried for hire or reward or in connection with the trade or business carried on by the applicant. There is no provision in the Chapter which may indicate that it is permissible to carry passengers in a goods carriage. Conditions can be imposed while granting a goods carriage permit.

6. The next provision which deserves notice is contained in Section 92 which provides that "any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to or restricts the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void." It is thus, clear that passengers can be carried in vehicles for which the stage

carriage or a contract carriage permit has been issued. Compensation for death or bodily injury to the passengers has to be paid. A contract which purports to negative or restrict the liability or impose any condition with respect to the enforcement of liability is void. Section 95 of the Act empowers the State Government to make rules as to stage carriages and contract carriages. It provides inter alia for regulating the conduct of passengers on vehicles which are permitted to carry passengers for hire or reward. The Government can make rules in respect of matters specified in Clause (2) (a) to (i) Section 96 empowers the State Government to frame rules in respect of matters covered by Chapter V. In particular, Sub-clause (xxxi) contemplates the making of rules in respect of "the carriage of persons other than the driver in goods carriage". There is not even an indication that any person can be allowed to travel on a goods carriage for hire or reward.

7. On a perusal of these provisions, it becomes clear that broadly the vehicles are of two kinds - (1) those which are permitted to carry goods; and (2) which are used for carrying passengers. Separate applications for grant of permits for vehicles meant to carry goods or passengers for hire or reward have to be made. The goods vehicles are "solely for carrying goods are not meant to carry any passengers for hire or reward. The owner of vehicle which is permitted to carry passengers for hire or reward cannot avoid the liability in case of death or bodily injury to a passenger even by entering into a contract with the concerned passenger. The omission to make a similar provision in respect of passengers travelling in a goods vehicle gives a clear indication regarding the legislative intent.

8. The next relevant provision is contained in Section 147. It appears in Chapter X. It relates to the insurance of vehicles against third party risks. Section 145 gives the definitions. Section 146 provides for the necessity of insurance to cover third party risks. It is intended to protect the rights of a third party who may suffer injuries due to the use of a Motor vehicle. Section 147 prescribes the requirements of policies and limits of liability. Clauses (1) and (2) which are relevant for the purposes of this case may be usefully reproduced. These are as under :-

"147. Requirements of policies and limits of liability -

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required -

(i) To cover liability in respect of the death arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death, of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle

(ii) to cover any contractual liability.

Explanation - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1) shall cover any liability incurred to in Sub-section (1) shall cover any liability incurred in respect of any accident, up to the following limits, namely: -

(a) save as provided in Clause (b), the amount of liability incurred;

b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever ever is earlier."

A perusal of the above provision shows that:-

(1) The insurance policy must be issued by an authorised insurer. It must insure the insured to the extent specified in Clause (ii).

(2) The insurance is against any liability which may be incurred by the insured in respect of the death of or bodily injury to any person including the owner of the goods or his authorised representative carried in the vehicle and against the death of or bodily injury to any passenger of a public service vehicle. The insured is also

entitled to be indemnified in respect of damage to any property or a third party caused by or arising out of the use of a vehicle in a public place.

(3) However, a policy shall not be required to cover liability:

(a) in respect of the death of or bodily injury to an employee of the insured which occurs during the course of employment except to the extent of the liability under the Workmen's Compensation Act, 1923"

(b) the liability under the Workmen's Compensation Act would be only in respect of an employee who is engaged in driving the vehicle or in case of a public service vehicle a conductor/a person examining tickets on the vehicle and if it is a goods carriage, the employee being carried in the vehicle; and

(c) a policy shall also not be required to cover any contractual liability.

(4) Clause (ii) provides that the policy of insurance shall cover liability which is actually incurred in respect of the accidents except that in respect of damage to the property of a third party, the liability can be limited.

9. When various provisions are read together, it appears that passengers cannot be carried on goods vehicles. The driver, the employee and the owner of the goods or his representative are the only persons who can be carried in a goods vehicle. So far as the driver and employee are concerned, a policy is not required to cover liability except to the extent of amount as may be found due under the Workmen's Compensation Act, 1923. So far as the owner of the goods or his representative are concerned, a provision can be made in the policy. Beyond that, the Statute does not contemplate carrying of passengers in goods vehicles or provision of an insurance cover for them.

10. It is no doubt true that the purpose of the Act is to compensate a person who has suffered injury. In case of death, the dependants have to be provided sum means of subsistence. Keeping in view the nature of the statute, the provisions have to be liberally construed. This, however, cannot mean that a person owning a truck is entitled to transport passengers whether for reward or otherwise and that in the event of accident, the insurance company is liable to pay compensation.

If this were permitted, the distinction between a goods carriage and a public service vehicle would be completely obliterated. Such does not appear to be the intention of the Parliament.

11. Ours is undoubtedly a welfare state. Effort has to be made to reduce the suffering of the people. Resultantly, the provisions of the Statute are construed liberally to provide succour to the needy. Yet, we cannot forget that the insurance companies are custodians of public funds. These are not houses of charity distributing money to the needy. If the Parliament had intended that whenever a person dies while travelling in any vehicle or otherwise, the Tribunal shall be entitled

to award compensation and the insurance company shall be liable to pay it, it could have so provided in clear and unambiguous language. However, by the process of interpretation the Courts cannot add to the provisions of the Statute and provide for payment of compensation where no clear provision has been made by the Parliament.

12. There is another aspect. The owner of a goods carriage violates the conditions of his permit. He carries passengers for hire or reward. He continues to do so day after day. One day the vehicle meets with an accident. The passengers are injured. The owner has been acting in violation of the Statute. He has been doing so out of greed for money. He has been actually deriving undeserved profits. Yet, when it comes to compensating the injured or the dependants of the deceased, he wants to pass on the liability to the insurer. Surely, if the Parliament had intended such a result, it could have so provided. The insurance company should not be made to suffer for the default committed by the owner. The person who violates law should suffer the consequence. Even the injured passenger who chooses to travel by goods carriage vehicle instead of going by bus or any public service vehicle is taking a voluntary risk, he does so at his own peril. There is no reason, either in law or in equity, to help him.

13. In view of the above, we would answer questions 1 and 2 posed by the Division Bench in the negative and hold that the insurance company is not liable to satisfy the award made by the Tribunal on the petition filed by a person who is injured or by the dependants of a person who dies in an accident while travelling in a goods vehicle. So far as the third question is concerned, Section 147 requires that a policy of insurance must insure the person "against any liability which may be incurred by him in respect of the death or bodily injury to any person including the owner of the goods or his authorised representative." Consequently, in his case, the company shall be liable to comply with the award.

14. In these case, learned counsel for the parties had addressed arguments only on the legal issues. These have been answered. Now the cases shall be listed before the appropriate Bench for decision on merits.