
(1987) 62 CompCas 265

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 207 of 1981

New India Assurance
Co. Ltd.

APPELLANT

Vs

Gurmit Kaur and Others

RESPONDENT

Date of Decision: May 9, 1985

Acts Referred:

Motor Vehicles Act, 1939 " Section 110

Citation: (1987) 62 CompCas 265

Hon'ble Judges: S.S. Sodhi, J

Bench: Single Bench

Advocate: G.S. Chawla, for the Appellant; Nasib Singh Gill, respondent Nos. 1 to 4 (claimants) and R.S. Ahluwalia, (driver), for the Respondent

Final Decision: Dismissed

Judgement

S.S. Sodhi, J.

The challenge in appeal here is to the liability of the insurance company for the compensation awarded.

2. A sum of Rs. 45,040 was awarded as compensation to the widow and children of Joginder Singh, deceased, who was killed in an accident with

bus PUO 5426 which was insured with the New India Assurance Company. The bus driver, owner, as also the insurance company, were held to

be jointly and severally liable for the compensation awarded.

3. The insurance company sought to avoid its liability on the plea that the accident had been caused by the bus driver, Sohan Singh, who did not

hold a valid driving licence at the time of the accident. A specific issue was framed to this effect. Sohan Singh, the bus driver, did not appear in the

witness box, nor was any other evidence placed on record to show that he possessed a valid driving licence at the relevant time. Mr. G.S. Chawla,

counsel for the insurance company, therefore, argued that this being the situation, no liability could be fastened upon the insurance company. Cited

in support was the judgment of the High Court of Madhya Pradesh in *The Anand Insurance Company Ltd. Vs. Hasanali and Others*, where it was

held that when a specific plea is taken that the driver had no valid driving licence, it was for the driver to produce the licence as the insurance

company could not be expected to call for the record of the Regional Transport Authority of each and every place in the country to show that no

licence had been issued to the driver. This view was, however, contrary to that expressed by this court in *Gurbachan Kaur v. Savita Kapoor*

[1984] II ACC 200 : [1986] ACJ 212 where, following the judgment of the Supreme Court in *Bishan Devi v. Sirbaksh Singh* : AIR 1979 SC

1862 : [1981] 51 Comp Cas 128 (SC), it was held that when a plea is taken that the driver of the offending vehicle was not duly licensed, it is the

duty of the insurer to substantiate it. This was also so held by the High Court of Karnataka in *M. Subramanya Bhat v. Gobindraj* AIR 1979 Kar

114. Following these precedents, it must be held that the burden lay upon the insurance company to establish that the bus driver did not hold a

valid driving licence and as it had failed to discharge it, it cannot be absolved from liability.

4. Faced with this situation, counsel for the appellant contended that as the burden of proving that the bus driver had a valid driving licence had

been placed upon him, the case be remanded to the trial court for a fresh decision in order to enable the insurance company to show that he in fact

possessed no such licence. This clearly does not warrant any remand of the case. As it is now well-settled that the burden of establishing any of the

defences open to the insurance company u/s 96 of the Motor Vehicles Act lies upon it, the mere fact that the Tribunal may have wrongly placed

the onus upon the bus driver provides no occasion for any fresh opportunity being afforded to the insurance company for this purpose. It would

certainly not be in the interests of justice to do so at this stage.

5. There is, thus, no merit in this appeal, which is accordingly dismissed with costs. Counsel's fee Rs. 500.