M/s. Afgan Bus Service, Bus Stand Patiala and another Vs Gurbachan Singh and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 5, 1980

Citation: (1981) ACJ 299

Hon'ble Judges: Rajendra Nath Mittal, J

Bench: Single Bench

Advocate: V.P. Gandhi, for the Appellant; Maharaj Baksh Singh, for the Respondent No. 1-2 and Mr. L.M. Suri, for the Respondent

Final Decision: Dismissed

Judgement

Rajendra Nath Mittal, J.
This judgment will dispose of F.A.O. Nos. 167 and 179 of 1972 which arise out of the same judgment.

2. Briefly the facts are that bus No. PNT 1080 owned by M/s Afgan Bus Service, Patiala, and driven by Rattan Singh met with an accident on

13th August, 1964 wherein Avtar Singh, a boy of 13 years, received fatal injuries. It is alleged that the accident took place on account of rash and

negligent driving of the driver. Avtar Singh was removed to Rajendra Hospital Patiala, where he died on August 16, 1964. Gurbachan Singh father

and Smt. Inderjit Kaur mother of the deceased filed a claim application of Rs. 50,000/. The application was contested by the Respondents, who

inter-alia pleaded that the accident did not take place on account of rash and negligent driving by the driver of the bus and that the application was

barred by limitation. The Insurance Company further contended that it was not liable to pay any damages as originally the bus belonged to Samana

Bus Survive Patiala who had sold the bus to M/S Afgan Bus Service, Patiala but the insurance policy had not been got transferred in the name of

the latter.

3. The learned Motor Accident Claims Tribunal came to the conclusion that the accident took place on account of the negligence of Rattan Singh

driver and that insurance policy had not been got transferred in the name of the Afgan Bus Service. It further held that the claim was barred by

limitation but the delay had already been condoned vide its order dated 23rd May, 1967. Regarding the damages the Tribunal assessed the

compensation to Rs. 6,000/- as damages. Consequently it accepted the claim application to the tune of Rs. 6,000/-.

4. Two appeals have been filed against the order of the Tribunal. One by M/S Afgan Bus Sorvice (F.A.O. No. 167 of 1972) and the other by the

claimants (F.A.O. 179 No. 1972). First I will deal with F.A.O. No. 167 of 1972.

5. The first contention of Mr. V.P. Gandhi, learned Counsel for the Appellants; is that the accident took place on August, 13, 1964 but Avtar

Singh injured died on August, 16, 1(sic)64. The claim application was however received by the Tribunal on October 24, 1964. He argues that it

was therefore delayed by about 12 days. According to him the claimants could not give sufficient grounds for condoning the delay. I regret my

inability to accept the contention. Gurbhajan Singh claimant deposed that due to the death of his son he and his wife were seriously shocked. The

driver and the representative of the Afgan Bus Service had come to him for compromise. They had been delaying in giving the address of the

Insurance Company uptill October 21, 1964. Subsequently, it is stated by him, they refused to supply the address of the Insurance Company as

well as refused to compromise the case. Nothing has been brought in his cross-examination on the bais of which his aforesaid statement can be

discarded. It appears that the claimants could not file the claim application as the driver and the owners of the Afgan Bus Service approached them

for a compromise. They it appears, intentionally prolonged the matter and ultimately refused to enter into a compromise, immediately after they

refused to compromise the claimants filed the claim application. In my view, the Tribunal in the aforesaid situation rightly condoned the delay.

6. The second contention of Mr. Gandhi is that after the transfer of the Bus by Samana Bus Service to Afghan Bus Service an intimation was given

by the insured to Mahavir Sahai, agent of the Insurance Company, in that regard. Thereafter it became the duty of the Insurance Company to

transfer the policy within a reasonable time and in case it did not want to do so, it should have intimated to the insured. He argues that it never

informed the insured that it was not ready to transfer the insurance policy. According to him, in the aforesaid situation the Insurance Company

cannot be allowed to say that on account of the transfer of the Vehicle by the Samana Bus Service it was absolved from its liability.

7. I am not convinced with this argument of Mr. Gandhi as well. G.D. Puri R.W. 1 is the Secretary of Jupiter General Insurance Company with

which the vehicle was insured. He stated that the Insurance Company did not receive any letter except the letter dated September 2, 1964 from

the Samana Bus Service regarding the transfer of insurance policy. From the statement it is evident that the insurance company was not informed

either by the Samana Bus Service or by Afgan Bus Service that the bus bad been transferred by the former to the latter and consequently the

insurance policy be transferred accordingly. It may be recalled that the accident took place on August 13, 1964 i.e. before the alleged intimation

was given by the Samana Bus Service. Faced with that situation the counsel referred to the statement of Harnam Singh R.W. 2, owner of Afghan

Bus Service. He stated that he purchased the bus from Samana Bus Service in April, 1964. The transfer gave him the insurance certificate of the

bus. It is further stated that the Insurance Company was informed about the transfer of the bus. He signed the form for the transfer of the insurance

policy in his name and paid Rs. 3/-. The counsel also referred to the statement of Mahavir Sahai R.W. 1. He was Manager of the Samaria Bus

Service. He stated that the bus was insured with the Jupiter Insurance Company through him. Necessary intimation was sent to the Insurance

Company with regard to the transfer of the bus from Samana Bus Service to Afghan Bus Service. All the documents he further stated were with

the Insurance Company. No document has been produced in support of the aforesaid assertion by the witness. Their bald statements cannot be

accepted. In the circumstances it cannot be held that the Insurance Company was intimated about the transfer of the bus by Samana Bus Service

to Afghan Bus Service. I, consequently, reject the contention of the learned Counsel.

8. The last contention of Mr. Gandhi is that there was a clause in the Insurance policy that the Insurance Company would be liable if the vehicle

was being driven by a driver. He argues that in the present case, Rattan Singh driver was driving the vehicle and that he had been held liable for

damages. Consequently, he argues that the Insurance Company was liable to pay the damages. He has placed reliance on a Division Bench

judgment of this Court in New India Assurance Co. Ltd. Vs. Moti Ram and Others . There is also no substance in this argument of Mr. Gandhi. In

the Insurance Policy it is stated that the Insured will be liable provided a driver is in Insured''s employment and is driving on his order or with his

permission. In the present case, the vehicle had been transferred by the Samara Bus Service to Afghan Bus Service. It has not been shown that

Rattan Singh driver was driving the vehicle with the permission of the Samana Bus Service which was insured. It has also not been shown that he

was under the employment of Samana Bus Service. In the circumstances, the Appellants cannot take benefit from the aforesaid clause. The facts in

New India Assurance Company''s case (supra) was different. In that case, it appears, that the driver was driving the vehicle at the direction of the

original owner. Thus, the learned Counsel cannot derive any benefit from that case.

9. Now I take F.A.O. No. 179 of 1972. Mr. Maharaj Baksh Singh learned Counsel for the Appellants has argued that the compensation awarded

is not adequate. He submitted that the compensation should be more than Rs. 6,000/-. He, however, has not been able to bring to my notice any

data on the basis of which the compensation can be enhanced. The deceased was reading in 7th Class at the time of his death. After taking into

consideration the circumstances of this case, I am not inclined to enhance the compensation.

10. For the aforesaid reasons, both the appeals fail and the same are dismissed with no order as to costs.