

(2005) 08 P&H CK 0049

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 350 of 2000

Oriental Insurance Company Ltd.

APPELLANT

Vs

Brahmi Devi and Others

RESPONDENT

Date of Decision: Aug. 2, 2005

Citation: (2006) 2 ACC 259 : (2006) ACJ 2284 : (2006) 142 PLR 457 : (2006) 1 RCR(Civil) 60

Hon'ble Judges: Ashutosh Mohunta, J

Bench: Single Bench

Advocate: Neeraj Khanna, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ashutosh Mohunta, J.

Insurance Company has filed this appeal to challenge the Award dated 29/10.1999 passed by the Motor Accident Claims Tribunal, Gurdaspur (for short "the Tribunal") whereby the claimant-respondents have been awarded an amount of Rs. 1,50,000/- as compensation on account of the death of Surinder Pal, who died in a road accident on 4.11.1991 at 2.30 P.M.

2. In brief, the facts giving rise to the present appeal are that Surinder Pal aged 24 years and was running a canteen at Railway Station, Jammu, was hit by a truck bearing registration No. PBN-6215 being driven by Mohal Lal, respondent No. 7, while the former was riding a motorcycle bearing registration No. PCW-1930. Surinder Pal was killed at the spot. The truck in question was owned by Kashmira Singh (respondent No. 6) and was insured with the Oriental Insurance Company Ltd., Pathankot (appellant herein). The legal heirs of Surinder Pal deceased i.e., his mother, three sisters "and one brother filed claim petition. The Tribunal found that the accident had been caused on account of the rash and negligent driving of the truck by Mohan Lal driver (respondent No.7). The Tribunal passed the award for an amount of Rs. 1,50,000/- with 15% interest from the date of application till date of

payment. As the truck was insured, the liability was placed on the Insurance company-the appellant. Now the Insurance Company has filed this appeal to challenge the award passed by the Tribunal.

3. The afore-mentioned facts are not disputed by the counsel for the appellant. However, the only plea raised by Mr. Neeraj Khanna, learned Counsel for the appellant is that Mohan Lal (respondent No.7), who was driving the offending vehicle was not holding valid driving licence. On this ground it has been pleaded that as the owner of the truck had not complied with the terms and conditions of the insurance policy and allowed the vehicle to be driven by a person who was not authorised to do so, therefore, the liability to make the payment of compensation to the claimants has wrongly been placed on the appellant-Insurance Company.

4. After hearing the learned Counsel for the appellant, I do not find any merit in the contention raised by him.

5. Kashmira Singh (respondent No.6), owner of the offending vehicle, appeared in the witness-box RW4 and stated that he had checked the driving licence of the driver. Apparently, the driving licence, photocopy of which is Ex.R-1, shows that it had been issued by a competent authority and is valid. It would not have created doubt in the mind of the owner about its being fake. Thus, it is not proved that the owner had committed any violation of any terms and conditions of the insurance policy. In *United India Insurance Company Ltd v., 2001 Accident Compensation Judicial Reports 303*, it has been held by this Court as follows:-

...breach means a willful violation of a condition which is imposed upon a contracting party under the instrument of contract. Every violation may not be a breach in the legal sense until there is an intention to commit that breach. The act and mind of the person must go together for the desired result before it is said that a person has committed breach of the condition of the contract. Negligence or mere lapse cannot be equated with willful violation. Truck is a costly vehicle running into lacs. The owner of the truck is supposed to give wages/salary to the driver and no sane person would like to commit a breach by handing over the vehicle to a person who is not having a valid driving licence. Under the Motor Vehicles Act there is no particular type of responsibility fixed upon the owner of a vehicle that he before engaging a driver should make a particular type of inquiry from the office of the licensing authority. However, it should be said that there must be a reasonable care which must be adopted by the owner of the vehicle such as the owner must see the original licence. If apparently the driving licence shows that it has been issued then a licensing authority which has signed the document and had put its seal, it is enough compliance....

6. In the present case, the appellant Insurance Company has nowhere been able to prove that the owner of the offending vehicle Kashmira Singh had not taken reasonable care while employing Mohan Lal (respondent No.7) as a driver and at the

time of entrusting the offending vehicle to him. As per the statement of Kashmira Singh (respondent No. 6), he had seen the driving licence when he had employed Mohan Lal as driver of the offending vehicle. A perusal of the photocopy of the driving licence (Ex.R-1) shows that driving licence No.3545/DTO/ASR was issued on 8.11.1988 in the name of Mohan Lal and was valid upto 5.11.1997. If the driving licence is shown to be fake afterwards, no fault can be found with the owner of the offending vehicle and it cannot be said that he had not taken reasonable care while employing Mohan Lal as a driver and, entrusting the vehicle to him.

Consequently, there is no merit in this appeal. It is, accordingly, dismissed.