

National Insurance Co. Ltd. Vs Reena Devi and Others

Court: High Court of Himachal Pradesh

Date of Decision: April 3, 2012

Acts Referred: Constitution of India, 1950 " Article 142
Motor Vehicles Act, 1988 " Section 2(14), 2(44), 2(46)

Citation: (2013) ACJ 1046

Hon'ble Judges: Dev Darshan Sud, J

Bench: Single Bench

Advocate: Deepak Bhasin, for the Appellant; G.R. Palsra and Mr. Vinod Gupta, for the Respondent

Judgement

Dev Darshan Sud, J.

This appeal has been filed by insurance company against the award of the learned Motor Accidents Claims Tribunal,

Mandi awarding a sum of Rs. 4,18,000 along with interest at the rate of 7 1/2 per cent per annum to the claimants from the date of filing of the

claim petition till its realization. It is undisputed before me that deceased Bhola Nath died in an accident on 11.3.2004 involving tractor of

respondent No. 1 before the Tribunal Sarvan Kumar. He was crushed under the wheel and died as a result thereof. On the settled issues, the

learned Tribunal on the evidence of the parties concluded that the death of Bhola Nath occurred in the accident involving tractor No. HP 31-6205.

The claim petition, though was resisted by the owner on the ground that the deceased had tried to board the tractor from the rear, i.e., trolley and

the accident occurred because of that fact and not because he was travelling in the tractor which was attached with the trolley and carrying sand. It

is also undisputed before me, and as has been held by the learned Tribunal, that the trolley was ferrying sand. To arrive at its conclusion the learned

Tribunal relies upon the evidence of Pawan Kumar, PW 3, who was an independent witness and was travelling with the deceased on the tractor on

the same day. It is also undisputed before me that the insurance is only for the tractor and trolley as is evident from Exhs. RB and RC which is

cover note of the insurance company placed on the record of the case.

2. The only point of law urged before me is as to whether the liability can be apportioned on respondent No. 2 before the learned Tribunal

(insurance company), appellant herein. This court in New India Assurance Co. Ltd. Vs. Sudesh Kumari and Others, held:

(2) Brief facts of the case are that the deceased Parminder Kumar is alleged to have died as a result of accident of tractor No. HR 02-A 7259.

According to the claimants, Parminder Kumar was travelling on the tractor along with his goods and Rs. 50 as fare was agreed to be paid to the

driver of the tractor. The claim petition was filed by the parents of Parminder Kumar and was instituted in the court of Motor Accidents Claims

Tribunal, Sirmour at Nahan on 6.11.1998. Hema Devi, widow of deceased, was shown as pro forma respondent, but vide order dated 29.7.1999

on an application for transposition having been moved by Hema Devi, she was alleged to be arrayed as petitioner No. 3.

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(6) Admittedly, the vehicle in question insured with the insurance company was a tractor. The seating capacity of the vehicle was only one. It was

meant to be used only for agricultural purpose and not for carrying of passengers.

(7) A tractor is not a goods vehicle. Section 2(44) defines "tractor" as under:

"tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); it

excludes a road-roller."

(8) It is, thus, clear that a tractor is not meant to carry any passenger or to carry any load. A trailer has been defined in section 2(46) as under:

"trailer" means any vehicle, other than a semi-trailer and a side car, drawn or intended to be drawn by a motor vehicle."

(9) When a trailer is attached to the tractor, the trailer can be used for carriage of goods. However, the trailer cannot be used for carriage of

passengers. The question whether the tractor becomes a goods vehicle when a trailer has been attached to it has been left open by the Apex Court

in National Insurance Co. Ltd. Vs. V. Chinnamma and Others, The Apex Court considered these questions and held as follows:

(15) A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in section 2(14) of the Motor Vehicles Act.

The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus necessarily is required to be used for

agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being

agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be

construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a

businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale

thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be

assumed that the trailer would answer the description of "goods carriage" as contained in section 2(14) of the Motor Vehicles Act, the case would

be covered by the decision of this court in Asha Rani and other decision following the same, as the accident had taken place on 24.11.1991, i.e.,

much prior to coming into force of the 1994 amendment."

(10) In the present case admittedly, the vehicle in question was a tractor and the insurance policy has been proved on record as Exh. RC. As per

the insurance policy, the risk cover is only for the driver and not the passenger and there is no liability on the insurance company with regard to pay

compensation to any passenger sitting on the said tractor. Therefore, the insurance company cannot be held liable.

3. In Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, , the Apex Court following its earlier decision in National Insurance Co. Ltd. Vs. V.

Chinnamma and Others, , holds that no liability can be fastened on the insurance company. However, while disposing of Brij Mohan's case (supra)

it was directed:

(13) However, respondent No. 1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of

compensation awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of

Ms. Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the

award may be satisfied by the appellant but it would be entitled to realize the same from the owner of the tractor and the trolley wherefore it would

not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act.

4. In these circumstances, this appeal is allowed. This appeal shall abide by the direction as given by the Apex Court in Oriental Insurance Co.

Ltd. Vs. Brij Mohan and Others, The award shall first be satisfied by the insurance company. Money stands deposited in this court. In that event it

will be open to the insurance company to recover the entire amount from the owner. Direction has been given keeping in view the fact that in this

case a poor labourer has died leaving behind his widow and other dependants. No order as to the costs. All the pending applications also stand

disposed of.