

Sukh Dev Vs. Bhagwati Devi and ors.

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Court : Himachal Pradesh

Decided On : Aug-07-1995

Reported in : II(1996)ACC174,1996ACJ1292

Judge : Kamlesh Sharma and; Lokeshwar Singh Panta, JJ.

Appeal No. : F.A.O. (MVA) No. 60 of 1994 and Cross-objection No. 248 of 1994

Appellant : Sukh Dev

Respondent : Bhagwati Devi and ors.

Advocate for Def. : Ajay Sharma,; M.S. Chandel,; N.K. Thakur,;

Advocate for Pet/Ap. : S.S. Kanwar and; Maninder Sodhi, Advs.

Disposition : Appeal allowed

Judgement :

Kamlesh Sharma, J.

1. This appeal under Section 173 of Motor Vehicles Act (hereinafter called 'the Act') is directed against the award dated 27.11.1993 passed by the Motor Accidents Claims Tribunal, Una, whereby an amount of Rs. 1,57,800 was awarded to respondent-claimant Nos. 1 to (1)hereinafter called 'the claimants') as compensation payable by the appellant-respondent Sukh Dev, owner of the tractor

No. PJD 1882. Respondent No. 10, Som Nath, son of Mangat Ram, was stated to be driver of the said tractor. Respondent No. 11, United India Insurance Co. Ltd., has been absolved of its responsibilities to indemnify the owner of the said tractor on the ground that there has been breach of specified condition of the insurance policy, such as, the driver did not have the valid licence at the time of accident which was in violation of Sub-section (2)(a)(ii) of Section 149.

2. We have heard the learned Counsel for the parties and gone through the record.

3. The brief facts are that one Madan Lal, husband/father of the claimants, died in a motor vehicle accident involving the tractor and a bus No. HIU 1978 belonging to H.R.T.C. which occurred on 27.10.1990 near a place, Lal Chhapri on the Tahliwal-Laluwal road. In the said accident, the tractor had rolled down about 50 feet, causing death of Madan Lal on the spot and injuries to other persons travelling therein. The claimants filed their petition under Section 166 of the Act, alleging that the accident had taken place due to rash and negligent driving of the tractor by its driver Som Nath, son of Mangat Ram and claiming compensation amount of Rs. 17,00,000/-. The owner of the tractor resisted the claim petition on the ground that the accident had taken place due to rash and negligent driving of the driver of H.R.T.C. bus, as such, he was not liable to pay compensation. All other allegations made in the claim petition were admitted and in para 8 of its reply, it was stated that respondent No. 5 never employed any driver of his tractor named Som Nath. The insurance company, in its separate reply, also opposed the claim petition and took number of preliminary objections. The following three preliminary objections are relevant for the purpose of present appeal:

(2) That since deceased Madan Lal, son of Salig Ram, was alleged to be travelling in the tractor as passenger the company is not liable because the insurance company has not entered to indemnify any claim arising out of such accident.

(3) That tractor was alleged to be used for hire and reward, therefore, the insurance company is not liable for any such claim.

(4) That the driver of tractor PJD 1882 (respondent No. 4) is not having valid driving licence, therefore, the company is not liable for any claim arising out of such accident.

4. The H.R.T.C. also filed reply to the claim petition denying its liability as its driver was not driving the bus rashly and negligently and the accident had taken place due to rash and negligent driving by the driver of the tractor. Replication was also filed to the replies of respondents.

On the pleadings of the parties, the following issues were framed:

(1) Whether the deceased died in the course of accident of tractor No. PJD 1882 and the bus No. HIU 1978 on 27.10.1990, as alleged? OPP.

(2) Whether the bus No. HIU 1978 was being driven rashly and negligently by the respondent No. 3 at the time of accident, as alleged? OPP.

(3) Whether the claim petition is not maintainable against respondent Nos. 1 to 3? OPR 1 to 3.

(4) Whether the tractor driver was driving the tractor rashly and negligently at the time of the accident? OPR 1 to 3.

(5) Whether the driver of accidental tractor, i.e., respondent No. 4 was not employed by the owner of tractor, i.e., respondent No. 5 as alleged, if so, its effect? OPR 5.

(6) Whether the respondent No. 6 is not liable for compensation on account of preliminary objection by respondent Nos. 2 & 3? OPR 6.

(7) Whether the respondent No. 5, driver of accidental tractor, was not possessing valid driving licence, as alleged? If so, its effect? OPR 6.

(8) Whether the claimants are entitled to compensation, if so, to what amount and from whom? OPP.

(9) Relief.

5. The Motor Accidents Claims Tribunal has held that accident in question had occurred due to rash and negligent driving of the driver of the tractor and not of the bus and the claim petition against the H.R.T.C. and its officers was rejected.

6. While deciding issue No. 5, it has been held that tractor was being driven by Som Nath, son of Mangat Ram who was also known as Ram Kishore and the defence of the owner of the tractor that he was not driving the tractor at the time of the accident was rejected, as he himself had given his name in his claim petition, RW 2/B, filed before the insurance company. However, in returning its finding on issue No. 7, it was held that he was not holding a valid licence, as such, insurance company is not liable for compensation payable by the insured. So far as the quantum of compensation is concerned, the Tribunal had determined the datum figure as Rs. 700/- per month to which the multiplier of 17 was applied and total amount of compensation of Rs. 1,42,800/- was awarded besides Rs. 5,000/- as conventional amount and Rs. 10,000/- to Bhagwati Devi for the loss of the company of her husband.

The owner of the tractor who has filed the present appeal is mainly aggrieved by the finding of the Tribunal on issue No. 7 that the driver of the tractor was not holding a valid driving licence, as a result of which the insurance company has been absolved from indemnifying him under the insurance policy.

7. Mr. S.S. Kanwar, learned Counsel for the owner, has vehemently urged that the appellant owner had engaged Ram Kishore, who is also known as Som Nath as held by the Tribunal, on the basis of his driving licence, which is prima facie valid being issued and thereafter renewed by the competent authorities, as such, the Tribunal is not right in holding that he was guilty of breach of any condition of insurance policy and insurance company is not liable to indemnify him of the compensation payable to claimants. To substantiate his submission, Mr. Kanwar has referred the judgment in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC), wherein the learned Judges have interpreted old Section 96(2)(b) (ii) which is pan materia to amended provisions of Section 149(2)(a)(ii). In the said judgment, the learned Judges have held:

It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach, the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the motor vehicle in charge of a licensed driver, with the express or implied mandate to drive himself it cannot be said that the insured is guilty of any breach. And it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause.

8. On the other hand, Mr. Ashwani Sharma, learned Counsel for the insurance company, has supported the findings of the Tribunal and has urged that from the evidence on record especially the statements of Balwan Singh, RW 2, Branch Manager of the insurance company and Harish Kumar, RW 3, steno-typist, D.T.O. Office, Patiala, it is proved that licence mark 'X' alleged to be that of driver Som Nath, son of Mangat Ram was fake and was never issued in his favour by the licensing authority. The true holder of the licence is Bakshish Singh of Patiala, as stated by Harish Kumar, RW 3. It is also pointed out by Mr. Sharma that copy of licence mark 'X' which was submitted by the appellant owner at the time of filing his claim is in the name of Ram Kishore and there is nothing on record to show that Ram Kishore is Som Nath, son of Mangat Ram.

9. We do not find any substance in the submission of Mr. Sharma as Amritsaria, PW 6, who was the eyewitness has stated that the tractor was being driven at the time of accident by Som Nath, son of Mangat Ram, who is also known by the name Ram Kishore. The witness produced by the insurance company, namely, Balwan Singh, Branch Manager, RW 2, has admitted that the driving licence mark 'X' which is in the name of Ram Kishore, son of Mangat Ram was submitted by the appellant owner along with his claim application, Exh. RW 2/B. It is correct that Harish Kumar, steno-typist of the D.T.O. Office, Patiala, RW 3, had deposed that the driving licence of the same number was issued by his office in the name of one

Bakshish Singh, son of Santokh Singh, but in his cross-examination he has admitted that he was having the record of issuance of duplicate licence only and he was not able to identify the signatures of D.T.O. on mark 'X' which shows that his statement is not conclusive to hold that licence mark 'X' was fake as alleged by the insurance company. We also find that this licence was also renewed by the licensing authority, Una. Another submission of Mr. Sharma that licence mark 'X' cannot be relied upon as it was not exhibited, is not available to the insurance company because this document was produced by it.

10. Above all, applying the ratio of judgment in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC), we are of the opinion that in the facts and circumstances of this case the appellant owner had done whatever was within his power, inasmuch as he has engaged a licensed driver and given him mandate to drive it himself, as such, it cannot be said that he is guilty of any breach disentitling him to get the compensation amount from the insurance company. The appellant owner cannot be penalised, as has been done by the Tribunal, as it was not expected of him to make detailed verification from the licensing authorities from where the licence was issued and renewed before engaging his driver. Therefore, we have no hesitation to hold that the insurance company is liable to indemnify the appellant owner for the compensation awarded to the claimants. Mr. Ashwani Kumar Sharma has tried to the another point that the accident had not occurred due to the negligence of the driver of the tractor but that of the driver of the bus We are not permitting this argument as by now it is well settled that this defence is not available to the insurance company. [See: *United India Insurance Co. Ltd. v. Shaik Saibaqtualla* 1992 ACJ 858 (AP); *British India General Insurance Co. Ltd. v. Captain Itbar Singh* 1958-65 ACJ 1 (SC) and *Raddipalli Chinnarao v. Reddi Lorurdu* 1980 ACJ 470 (AP)].

11. The claimants have also filed cross-objections praying for an enhancement of the compensation amount. Mr. Ajay Sharma, learned Counsel for the claimants, has urged that the Tribunal has not correctly arrived at the datum figure of Rs. 700/-. According to him, the evidence of Bhagwati Devi, PW 3, wife of the deceased Madan Lal and Amritsaria, PW 6, has not been read and appreciated in its correct perspective by the Tribunal. According to the learned Counsel, the

Tribunal is not right in holding that the business of flour mill, etc., being run by deceased Madan Lal belonged to the family and his brother was also entitled to share its income. He has also pointed out that the documents, Exhs. PW 4/A and PW 4/B, show that the registration of the industrial unit as well as electricity connection of the industrial unit was in the name of deceased Madan Lal. We find that these documents are not conclusive to come to a conclusion that the industrial unit being run by deceased Madan Lal exclusively belonged to him and his father and his brother did not have any share in it. However, there is evidence on record that it was being run by deceased Madan Lal. Therefore, looking to the type of industrial unit, number of members of his family dependent on it and other relevant factors, we hold that total income of deceased Madan Lal was not less than Rs. 1,500/- per month. Besides deceased Madan Lal, the other members of his family were his wife, two major children, two minor children and aged father who was dependent upon him and the total units come to 12. He must be spending 1/6th share of his total income amounting to Rs. 250/- on himself. Deducting this amount from his monthly income, the datum figure comes to Rs. 1,250/-.

12. We find that looking to the age of the deceased Madan Lal as 45 years, the multiplier of 17 applied by the Tribunal is on the higher side. In view of the average age in this part of the country as well as the other relevant factors concerning productive years of an individual, the correct multiplier in the present case should be 13. Applying this multiplier to the datum figure of Rs. 1,250/-, the compensation to which the claimants are entitled comes to Rs. 1,95,000/-, out of which an amount of Rs. 1,42,800/- has already been awarded. Therefore, we allow the cross-objections and hold that the claimants are entitled to enhancement of the compensation to the extent of Rs. 53,000/-.

13. The result of the above discussion is that the appeal of the appellant owner is allowed and the findings of the Tribunal on issue No. 7 are set aside holding that the insurance company is liable to indemnify the insured owner of the tractor for the compensation amount payable by him to the claimants. The cross-objections are also allowed and the claimants are held entitled to enhancement of Rs. 53,000/- as compensation. The claimants will also be entitled to interest at the rate of 12 per cent per annum on the enhanced amount from the date of presentation

of the claim petition. The remaining award of the Tribunal in respect of payment of the conventional amount of Rs. 5,000/- and the amount of Rs. 10,000/- to Bhagwati Devi for loss of company of her husband is upheld.

The amount of Rs. 25,000/- deposited by the appellant be refunded to him with interest up to date.

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