IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO-609-1989
Reserved on 20.7.2023
Date of Decision:12.10.2023

The New India Assurance Company Limited

....Appellants

VERSUS

Punjab State and others

....Respondents

*****

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

*****

Argued by : Mr. Neeraj Khanna, Advocate, for
Mr. Deepak Suri, Advocate,
for the appellant insurance company.

Mr. Sandeep Chopra, DAG, Punjab,
for respondent No.1-State.

Service of notice upon respondent No.2 dispensed with
vide order dated 4.10.2016.

Mr. Nand Lal Sammi, Advocate for
Mr. Hitesh Kumar Sammi, Advocate
for respondents No.3 to 6.

****

KARAMJIT SINGH, J.

The appellant insurance company has filed this appeal against award dated 2.2.1989 passed by Motor Accident Claims Tribunal, Ludhiana whereby insurance company was held liable to pay compensation to injured/LRs of the deceased.

2. Brief facts of the case are that deceased-Gurdev Singh was working as a Junior Engineer in Public Health Department at Moga and deceased-Manohar Lal was working as a Cleaner on truck No.PUU 9086

belonging to Public Health Department, Moga; that on 17.6.1987, both of them were coming back to Moga via Nellon-Ropar road along Sirhind canal in the aforesaid truck which was driven by Surinder Kumar-respondent No.2 in rash and negligent manner and at a very high speed. When the truck reached near the road crossing in between village Poonia and Bhande, respondent No.2 lost control and the truck fell into the canal. Resultantly, Gurdev Singh and Manohar Lal were drowned in the canal while other persons travelling in the said truck were saved by Surjit Singh son of Chhaju Singh with the help of boat. The matter was reported to the police by aforesaid Surjit Singh and then FIR was registered against respondent No.2-Surinder Kumar. The truck was insured with appellant insurance company.

3. LRs of Gurdev Singh filed MACT No.229 /2 of 1987 against respondent No.1-Punjab State, respondent No.2-Surinder Kumar and the appellant insurance company for grant of compensation on account of death of Gurdev Singh in the aforesaid accident.

4. In the same manner legal heirs of Manohar Lal filed MACT-354/3 of 1987 for grant of compensation on account of death of Manohar Lal in aforesaid accident.

5. Both the claim petitions were contested by the owner, driver and insurer of the offending vehicle and separate written statements were filed. The factum of the accident was not denied but it was pleaded that the accident took place due to some mechanical defect in the vehicle and not due to negligence of the driver of the vehicle in question. The insurance company also took plea that it is not liable to pay any compensation in the present case.

6. Replications were filed controverting the averments made by

the respondents in their written statements.

7. On the pleading of the parties following issues were framed:-

i. Whether the accident took place due to rash and negligent act of the truck driver bearing registration No.PUU-9086? OPA

ii. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPA

iii. Relief.

8. Then the parties led their respective evidence and the Tribunal decided issue No.(i) and (ii) in favour of the claimants and awarded compensation worth ₹52,320/- to Hans Raj and other claimants along with interest at the rate of 12% per annum from the date of the claim petition till its realization, on account of death of Manohar Lal in MACT-354/3-1987. Likewise award of ₹2,26,560/- was passed in favour of Balbir Kaur and Ors. along with interest @ 12% per annum from the date of claim petition till its realization in MACT-229/2 of 1987. In both the claim petitions, appellant-insurance company was held liable to pay the compensation. The share of minors was directed to be deposited in some Nationalized Bank in shape of fixed deposit till they attain the age of majority.

9. Being not satisfied, this appeal has been filed by the insurance company.

10. I have heard the counsel for the parties.

11. The counsel for the insurance company has *inter alia* submitted that the accident in question took place in 1987 and at the time of accident, truck in question was insured with the appellant-insurance company. The counsel for the appellant has further contended that the present case is covered under the provisions of Section 95 of the Motor Vehicles Act, 1939, as the accident in question took place before coming into force of the Motor

Vehicles Act, 1988, which was enacted on 14th October, 1988. The counsel for the appellant has further argued that at the time of accident, both the deceased were travelling in a truck (goods vehicle) belonging to Public Health Department of Punjab State. The counsel for the appellant has further contended that the deceased were employees of the Public Health Department, but they were not owner or driver of the vehicle in question. That as per the law laid down by Hon'ble Apex Court in **New India Assurance Company Ltd. vs. Asha Rani, 2003(2) SCC 223**, insurer could not be held liable for death or bodily injury suffered by any person found travelling in the goods vehicle, which met with an accident. The counsel for the appellant has further argued that in the light of the aforesaid settled position of law, the insurance company is not liable to pay the amount of compensation and in case it has already paid the same to the claimants, then it is entitled to recover the same from the owner of the vehicle in question.

12. On the other hand, the counsel for the respondent-State while supporting the impugned award passed by the Tribunal has *inter alia* submitted that there is no illegality or infirmity in the impugned award. It has been further contended that the vehicle in question was owned by Public Health Department and the deceased were also employees of the said Department and the deceased were travelling in the said official truck in discharge of their duties and the said official truck was insured with the appellant-insurance company and it being so, the Tribunal rightly fastened the liability of appellant insurance company.

13. I have considered the submissions made by counsel for the parties.

14. It is not disputed that at the time of the accident in question,

deceased Gurdev Singh and Manohar Lal were working in Public Health Department of Punjab and they were travelling in truck No.PUU-9086 belonging to the said Department and the same was driven by Surinder Kumar and the truck went out of control and fell into a canal and Gurdev Singh and Manohar Lal died due to drowning. It appears that at the time of accident, both the deceased were on their government duty.

15. There is no challenge to the quantum of compensation awarded by the Tribunal. However, the appellant-insurance company has challenged the impugned award on the ground that the insurance company is not at all liable to pay the amount of compensation. Admittedly, the accident in question took place in 1987 and thus provisions of Section 95 of Motor Vehicles Act, 1939 are applicable to the present case.

16. A Three Judge Bench of the Hon'ble Supreme Court in **Asha Rani's** case (supra) while taking into notice the provisions of Section 95 of the Motor Vehicles Act, 1939, Section 147 of Motor Vehicles Act, 1988 as it stood prior to its amendment of 1994 considered the question, whether it is compulsory for the insurance company to cover the liability in respect of passengers travelling in a goods vehicle. The Hon'ble Supreme Court overruled its earlier decision in **New India Assurance Company vs. Satpal Singh (2000) 1 SCC 237** and held as follows:-

> "*That the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle, when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury.*"

17. Section 95 of the Motor Vehicles Act, 1939 reads as under:-

95.Requirements of policies and limits of liability.

(1) In order to comply with the requirements of this Chapter, a policy

of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer 3[or by a co-operative society allowed under section 108 to transact the business of an insurer], and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(I) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place ;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or, arising out of the use of the vehicle in a public place

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment [other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle], or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting front the vehicle at the time of the occurrence of the event 'out of which a claim arises, or

(iii) to cover any contractual liability.

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage, to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwith- standing that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-

(a) where the vehicle is a goods vehicle, a limit of [one lakh and fifty thousand rupees] in all, including the liabilities, if any,arising under the Workmen's Compensation Act, 1923, (8 of 1923.) in respect of the death of, or bodily injury to, employees, (other than the driver), not exceeding six in number, being carried in the vehicle.

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all

(ii) in respect of passengers.

(1) a limit of fifteen thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passenger; and

(4) subject to the limits aforesaid, ten thousand rupees for each

individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form a containing the prescribed particulars of any, conditions subject which the policy is issued and of any other prescribed matters different forms, particulars and matters may be prescribed in different cases.

(4A) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify he fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person, specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person."

18. The Hon'ble Supreme Court in **Asha Rani's** case (supra) also observed as follow:-

"The applicability of decision of this Court in Mallawwa (Smt.) & Ors. v. Oriental Insurance Company Ltd. & Ors. [(1999) 1 SCC 403] in this case

must be considered keeping that aspect in view. Section 2(35) of 1988 Act does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did as even passengers could be carried in a goods vehicle. The difference in the definitions of the "goods vehicle" in 1939 Act and "goods carriage" in 1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words "in addition to passengers" occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use "solely for the carriage of goods". Carrying of passengers in a 'goods carriage', thus, is not contemplated under 1988 Act"

19. As per sub-Section 2 of Section 95 of the Motor Vehicles Act, 1939, a policy of insurance shall cover any liability incurred in respect of anyone accident upto the following limits:

(a) Where a vehicle is a goods vehicle, a limit of ₹1,50,000/- in all including the liabilities, if any arising under Workmen Compensation Act in respect of death of employees (other than the driver), not exceeding 6 in numbers being carried in the vehicle.

(b) Where the vehicle is vehicle in which passengers are carried for higher or reward or by reason of or in pursuance of a contract of employment.

(i) In respect of persons other than passengers carried for higher or reward a limit of ₹1,50,000/- in all.
(The aforesaid limit was increased from ₹50,000/- to ₹1,50,000/- w.e.f. 1st October, 1982).

20. Admittedly in the present case the deceased were travelling in a goods vehicle in pursuance of a contract of employment and the said vehicle was owned by their employer-insured and thus, as per the aforesaid provisions of Section 95(2) of the Motor Vehicles Act, 1939, the insurance company is liable to indemnify the legal heirs of Gurdev Singh and Manohar Lal to the extent of ₹1,50,000/-, the reason being the deceased could not be considered as a passengers carried for hire or reward. It is evident that the

deceased were travelling in the vehicle in question owned by their employer in course of employment as at that time both the deceased were on government duty. Thus the insurance company is liable to pay compensation to the extent of statutory liability under Section 95 of Motor Vehicles Act, 1939, which is ₹1,50,000/-, in all. However, the appellant-insurance company cannot be fastened with entire liability awarded by the Tribunal.

21. In the light of the above discussion, the appeal filed by the appellant-insurance company is partly allowed and the award passed by the Tribunal is hereby modified to the effect that the appellant-insurance company is liable to pay ₹1,50,000/- in total to the claimants of MACT Nos.229/2-1987 and No.354/3 of 1987. The balance awarded amount is to be paid by the owner of truck No.PUU-9086 to the claimants. In case, the entire awarded amount has already been paid by the appellant-insurance company to the claimants in both the claim petitions, recovery rights are hereby given to the appellant to recover the excess amount already paid by it to the claimants, from the owner of the vehicle. The appeal stands disposed of in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

12.10.2023
Paritosh Kumar/Gaurav Sorot

Whether speaking/reasoned Yes/No
Whether reportable Yes/No