

Anu Bhanvara Etc. vs Iffco Tokio General Insurance Company ... on 9 August, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3934, AIR ONLINE 2019 SC 866, (2019) 10 SCALE 668, (2019) 3 ACC 676, (2019) 3 CURCC 345, (2019) 3 PUN LR 639, (2019) 4 ACJ 2802, (2019) 4 RECCIVR 79, (2019) 5 ANDHLD 287, (2019) 6 ALLMR 470, (2019) 76 OCR 107, (2020) 1 CIVLJ 96, AIR 2019 SC (CIV) 2943

Author: Vineet Saran

Bench: Vineet Saran, R. F. Nariman

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.6231-6232 OF 2019
[ARISING OUT OF S.L.P. [C] Nos.19090-19092 OF 2019]
[@ DIARY NO. 8720 OF 2018]

ANU BHANVARA ETC.

... .APPELLANTS

VERSUS

IFFCO TOKIO GENERAL INSURANCE
COMPANY LIMITED & ORS.

...RESPONDENTS

JUDGMENT

Vineet Saran, J.

Leave granted.

2. These appeals are against the judgment and order dated 05.04.2016 passed by the High Court of Punjab and Haryana at Chandigarh relating to the claims for compensation in respect of injuries sustained by two gratuitous passengers in a jeep (goods vehicle). The Motor Accidents Claims Tribunal (for short “Tribunal”) had dismissed the claim petitions on the ground that the negligence of the driver was not proved.

However, the High Court, after 12:34:23 IST Reason:

holding that the accident was as a result of composite negligence of the driver of the jeep and the other offending vehicle, held that the owner and driver of the jeep would be liable for payment of compensation and exonerated the insurer of the jeep, on the ground that the vehicle was insured as a goods vehicle and the claimants, who had sustained injuries, were gratuitous passengers in the goods vehicle (Jeep) and would thus not be covered under the insurance policy as they were not travelling as owner of the goods. The insurance of the jeep, as a goods vehicle, has been found to be valid.

3. In F.A.O. No. 5460 of 2012 before the High Court, the case was of one Anu Bhanvara, aged about fifteen years at the time of the accident, who, because of injuries sustained, had to have amputation of wrist resulting in 55% disability. The Tribunal assessed total compensation of Rs.5,26,000/□ which was after assessing disability compensation of 55% at Rs.50,000/□ loss of prospect of marriage at Rs.1,00,000/□ and cost of artificial limb at Rs.3,76,000/□ The High Court enhanced the compensation to Rs.6,41,750/□ after awarding additional compensation for medical expenses, pain and suffering, income loss etc. in addition to what was assessed by the Tribunal.

4. In the other F.A.O. No. 5461 of 2012 before the High Court, the case was of one Rohit Kumar, aged about eighteen years at the time of accident, who, because of the injuries sustained in the accident, had to have his arm amputated below the elbow resulting in 70% disability. The Tribunal assessed total compensation of Rs.5,78,000/□ which was after assessing the disability compensation of 70% at Rs.50,000/□ income assessed at Rs.54,000/□ and cost of artificial limb at Rs.3,90,000/□ The High Court enhanced the compensation to Rs.7,36,000/□ after awarding additional compensation for medical expenses, pain and suffering, income loss etc. in addition to what was assessed by the Tribunal.

5. Challenging the said judgments of the High Court, these appeals have been filed by the claimants for enhancement of compensation and also to direct payment of compensation by the insurer.

6. We have heard Mr. S. L. Gupta, learned counsel for the appellants and Ms. Shanta Devi Raman, learned counsel for the respondent no.1□ insurer and have perused the material on record.

7. The questions now to be considered by this Court are two□fold; firstly, whether the amount of compensation awarded was adequate or not; and secondly, whether the payment of compensation is to be made jointly by the owner and driver of the vehicle, or by the insurer which could thereafter be recovered by the insurer from the owner and driver.

8. Having regard to the respective age of the two claimants and keeping in view that compensation has been awarded on all requisite heads by the High Court, we are of the opinion that no interference is called with regard to the quantum of compensation awarded to the two claimants.

9. The next question is as to which of the respondents, that is the owner and driver, or the insurer of the vehicle, would be liable for payment of such compensation. As regard the liability for payment of compensation, it has been contended by the learned counsel for the appellants that since the vehicle was admittedly insured with the respondent no.1 Insurance company, the principle of pay and recover would be invoked even in case of a gratuitous passenger in a goods vehicle. The insurance company should thus be made liable for the payment of compensation to the appellants and in turn they would have the right to realise/recover the same from the owner and driver of the vehicle. In support of his submission, learned counsel for the appellants has relied on the following decisions of this Court, namely, *Manuara Khatoon v.*

Rajesh Kumar Singh (2017) 4 SCC 796, *Puttappa v. Rama Naik* (Civil Appeal No.4397 of 2016, disposed of on 2 nd April, 2018); *Manager, National Insurance Co. Ltd. v. Saju P. Paul* (2013) 2 SCC 41; *New India Assurance Co. Ltd. v. Vimal Devi* (Civil Appeal Nos.1578-1579 of 2004, disposed of on 5th October, 2010); *National Insurance Co. Ltd. v. Challs Upendra Rao* (2004) 8 SCC 517; *New India Assurance Co. Ltd. v. C. M. Jaya* (2002) 2 SCC 278; *Amrit Lal Sood v. Kaushalya Devi Thapar* (1998) 3 SCC 744.

10. Per contra, learned counsel for the respondent Insurance company has contended that since the claimants were gratuitous passengers in a goods vehicle, in which case the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not apply. It has thus been contended that the order of the High Court is perfectly justified in law and calls for no interference by this Court. In support of her submission, learned counsel has relied on following decisions, namely, *New India Assurance Co. Ltd. v. Asha Rani* (2003) 2 SCC 223; *National Insurance Co. Ltd. v. Baljit Kaur* (2004) 2 SCC 1; *National Insurance Co. Ltd. v. Kaushalya Devi* (2008) 8 SCC 246; *National Insurance Co. Ltd. v. Rattani* (2009) 2 SCC 75; *National Insurance Co. Ltd. v. Prema Devi* (2008) 5 SCC 403; *Bharat AXA General Insurance Co. Ltd. v. Adani MANU/TN/6503/2018*; *Bajaj Allianz General Insurance Co. Ltd. v. Lal Singh* (2015) SCC Online Del 7508.

11. We have heard learned counsel for the parties and perused the record as well as the various decisions cited by learned counsel for the parties. The insurance of the vehicle, though as a goods vehicle, is not disputed by the parties. The claimants in the present case are young children who have suffered permanent disability on account of the injuries sustained in the accident. Thus, keeping in view the peculiar facts and circumstances of this case, we are of the considered view that the principle of “pay and recover” should be directed to be invoked in the present case.

12. Accordingly, these appeals are disposed of with the direction that the respondent no.1 – insurance company shall be liable to pay the awarded compensation to the claimants in both the appeals. However, respondent no.1 – insurance company shall have the right to realize the said amount of compensation from the respondents no. 2 and 3 (driver and owner of the vehicle) in accordance with law.

13. There shall be no order as to costs.

.....J. [R. F. Nariman]J. [Vineet Saran] New Delhi;

August 9, 2019.