

Punjab-Haryana High Court

Col. K.S. Dhaliwal Son Of Shri ... vs The New India Assurance Company ... on 22 October, 1993

Equivalent citations: I (1994) ACC 415, (1994) 106 PLR 580

Author: J L Gupta

Bench: S Aggarwal, J L Gupta

ORDER Jawahar Lal Gupta, J.

1. These five Letters Patent Appeals Nos. 140 and 183 of 1986 and 77 to 79 of 1991, arise out of two claim petitions filed under Section 110-A of the Motor Vehicles Act, 1939. Both the claim petitions were disposed of by one award by the Motor Accident Claims Tribunal, Chandigarh. Four appeals including F.A.O. No. 469 of 1981 were filed against the award of the Tribunal. In F.A.O. No. 469 of 1981 even cross objections had been filed. It is against the judgment of the learned Single Judge that these appeals have been filed. Four out of these, five Letters latent Appeals have been filed by Col. K.S. Dhaliwal. An appeal has also been filed by Sint Jagdeep Riar. These can be disposed of by one order. A few facts may be noticed.

2. On July 29, 1978, at about 11.30 A.M., a Jeep No.CH 3004 was involved in an accident with a Car bearing No. PUR 2888. Dr. Manjit Singh Riar, who was working as a Doctor in the General Hospital, Sector 16, Chandigarh, was killed. The widow, Mrs. Jagdeep Riar who re-married, about 27 months after the death of her husband, on October 16, 1980 and the parents of the deceased claimed compensation. The Tribunal found that the accident had occurred on account of the negligence of Mohinder Pal Singh, the car Driver. It awarded a compensation of Rs. 15,000/- to the widow and Rs. 60,000/- to the parents with interest at the rate of six percent per annum from the date of petition against the respondents who were held to be jointly and severally liable. On appeal, the learned Single Judge enhanced the amount of compensation payable to the widow from Rs. 15,000/- to Rs. 25,000/- while the compensation awarded to the parents was maintained at Rs. 60,000/-. The learned Single Judge also enhanced the rate of interest from 6 percent to 12 percent. It was also held that liability for the compensation awarded shall be that of driver Mohinder Pal and Col. K.S. Dhaliwal." As a result, the cross objections filed by the claimant, Jagdeep Riar as also the appeals filed by the Insurer and the parents of the deceased were accepted with costs while that filed by Col. K.S. Dhaliwal was dismissed.

3. We have heard learned counsel for the parties.

4. Mr. J.R. Mittal, learned counsel for Col. K.S. Dhaliwal has contended that the appellant was not the owner of the vehicle and as such, the learned Single Judge has erred in holding him liable to pay the compensation. This contention has been controverted by the learned counsel for the respondent.

5. On perusal of the record, we find that the contention is untenable. In the claim petition filed by Mrs. Jagdeep Riar, Col. K.S. Dhaliwal was stated to be the owner of the vehicle. This was admitted by the appellant. Similarly, in para 16 of the claim petition filed by the parents of the deceased, Col. K.S. Dhaliwal was described as the owner of the Vehicle. The appellant had filed a separate written statement in this petition. In para 15, it was averred that "the Car No. P.U.R. 2888 owned by the answering respondent was insured with New India Assurance Company Sector 17, Chandigarh." In

reply to para 16, it was averred that "para No. 16 of the claim application is not denied and as such is correct." The pleadings of the appellant, thus, clearly show that he was the owner of the vehicle. In spite of this, an attempt was made at the stage of evidence to show that Mr. S.S. Saroj was the owner of the vehicle and that a relationship of master and servant existed between him and the Car Driver, Mohinder Pal. The appellant appeared as RW-5 and stated that he had borrowed the car from Mr. Saroj for use of his family on July 29, 1978. When cross-examined, he admitted that the car had been with him ever since June 7, 1976 when a power of attorney had been executed in his favour. It was further suggested to him that he had sent the car to Mr. Bakshi (RW6) of M/S Brook Bond, 6 on hire. Even though, he denied the suggestion, yet his statement is clearly belied by the evidence of Mr. Maharaj Krishan Bakshi, RW-6 who categorically stated that "the car No. PUR 2888 had been taken by us on monthly rent at the rate of Rs. 1400/-for the purpose of sale-The amounts used to be paid to Col. K.S. Dhaliwal. I have brought the vouchers signed by Shri K.S. Dhaliwal from April 1977 to November 1977 and thereafter from January 1978 to July 1978." It is also established on record that Col. K.S. Dhaliwal looked after the maintenance of the Car, paid all the taxes and the premium for the Insurance Policy. Even expenses for the repair of the car on account of the accident were paid by Col. Dhaliwal. Further more, when confronted with the vouchers, Col. K.S. Dhaliwal admitted his signatures thereon and stated that he might have affixed his signatures on revenue stamps on blank papers. It was a clear attempt to hide the truth. It is no wonder that the Tribunal had to note that he was not giving the answers "In a straight forward manner." and the learned Single Judge found that "scant regard for truth or the sanctity of the oath is revealed in the testimony of RW-5 Col. Dhaliwal which is indeed a sad comment to make-."

6. The well established rule is that it is the case pleaded that has to be proved. The appellant had clearly pleaded that he was the owner of the; vehicle. The document and oral evidence on record clearly establishes this fact. The attempt made to shift the responsibility is clearly negated by the oral and documentary evidence on record. We find no reason to differ with the view taken by the learned single Judge. We, accordingly, confirm the finding of the learned Single Judge.

7. Relying on the decision of a Division Bench of this Court in *Machinery and Hardware Stores Agency v. The Northern India General Insurance Co. Ltd. and Ors.*, Letters Patent Appeal No. 177 of 1973, decided on October 15, 1975, Mr. Mittal contended that the appellant was not liable to pay the compensation as the ownership of the vehicle had continued to vest in respondent No. 6, Shri Sharnsher Singh Saroj. In this case, it was found as a fact that "the registration certificate of the vehicle and the insurance policy etc. also continued to be in the name of the first owner. Even in the written statement, the first owner did not make any averment that the ownership in the vehicle had been transferred to the second owner before the time of the accident. In these circumstances, the concurrent findings of fact that the first owner continued to be the owner of the lorry is affirmed." Such is not the position in the present case. The appellant had categorically admitted in the written statement that he was the owner of the vehicle. Consequently, the appellant can derive no advantage from the decision in the case of *Mis. Machinery and Hardware Stores (supra)*.

8. No other point was urged in any of the appeals.

9. Accordingly, we find no merit in any of these appeals which are dismissed. In the circumstances of these cases, the parties are left to bear their own costs.