
(2016) 04 SHI CK 0165
In the High Court Of Himachal Pradesh
Case No : FAO No. 187 of 2010

Baldev Singh

APPELLANT

Vs

Jagdish Chand

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) AAC 560 : (2016) ILRHP 977

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Manohar Lal Sharma, Advocate, for the Appellant; Mr. Ajay Verma, Advocate and vice Ms. Archana Dutt, Advocate, for the Respondent No. 1; Mr. Aman Sood, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral)—The appellant has questioned the award dated 25th February, 2010, passed by the Motor Accident Claims Tribunal (I) Sirmaur District at Nahan, H.P., hereinafter referred to as "the Tribunal"), in M.A.C. Petition No. 87-MAC/2 of 2007, titled Jagdish Chand v. Shri Baldev Singh & another, whereby the compensation to the tune of Rs. 8,22,122/- with interest @ 7.5% per annum from the date of filing of the claim petition, came to be awarded in favour of the claimant-respondent No. 1 herein and against the driver-appellant herein, for short "the impugned award".

2. The Tribunal has decided all the issues in favour of the claimant and against the driver/owner. It held that the tractor was not to be used for agricultural purpose, as per registration certificate and saddled the owner-cum-driver with liability.

3. The claimant and insurer have not questioned the impugned award, on any count, thus has attained finality so far it relates to them.

4. The only question to be determined in this appeal is-whether the findings

returned by the Tribunal in para-21 of the award are legally correct? The answer is in the negative for the following reasons.

5. The copy of the Registration Certificate Ext. RW-1/D is on the record. Clause 16 of the said document does disclose that the tractor is meant for transport, also. The gross weight of the offending vehicle, as shown in Ext. RW-1/D, is 5225 kilogram, falls within the definition of "light motor vehicle."

6. This Court has laid down the same principle in case titled Oriental Insurance Company v. Gulam Mohammad (since deceased) & others, reported in Latest HLJ 2014 (HP) 244 and in case titled as Joginder Singh @ Pamma v. Vikram @ Vicky and others, reported in Latest HLJ 2014 (HP) Suppl. 292.

7. The claimant has specifically averred in the claim petition that the claimant-injured had loaded cow-dung in the offending vehicle, met with an accident, sustained injuries and succumbed to the same.

8. The seating capacity of the offending vehicle was 1+1, i.e. the risk of the driver was covered in terms of the Insurance Policy.

9. The finding of the Tribunal that the insured has violated terms and conditions of the Insurance Policy, is illegal. Accordingly, the findings returned by the Tribunal in para-21 of the impugned award are set aside and it is held that the deceased was traveling in the tractor with trolley, as labourer. He was engaged by the driver-cum-owner for the purpose of loading and unloading the cow dung.

10. Having said so, it is held that the impugned award is set aside and the insurer is saddled with the liability.

11. The insurer-Insurance Company is directed to deposit the awarded amount within eight weeks from today. On deposit, the same be released in favour of the claimant, strictly as per the terms and conditions contained in the impugned award, through payees' account cheque or depositing it in his account.

12. It is made clear that the amount deposited by the owner-Baldev Singh, before the Registry as statutory amount, is awarded as costs in favour of the claimant.

13. The Registry is directed to release the statutory amount in favour of the claimant, strictly in terms of conditions contained in the impugned award, through payees' account cheque or by depositing in his account.

14. Accordingly, the impugned award is modified, as indicated above and the appeal is disposed of.

15. Send down the records after placing a copy of the judgment on the Tribunal's file.