(2009) 11 SHI CK 0050

In the High Court Of Himachal Pradesh

Des Raj APPELLANT

Vs

United India Insurance Company and Another RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 11 SHI CK 0050

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—The owner of the vehicle has filed the present appeal u/s 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as the Act) assailing the award dated 18.2.2005 passed by the Motor Accident Claims Tribunal-II, Solan Camp at Nalagarh in M.A.C. Petition No. 33-NL/2 of 2003, titled as Sh. Rulda Ram v. Sh. Des Raj and Anr. The challenge is limited to the findings returned on issues No. 3 and 4.

2. Facts necessary for disposal of the appeal are as under.

3. Sh. Rulda Ram filed a petition u/s 166 of the Act claiming compensation of a sum of Rs. 7 lacs on account of death of his wife Smt. Sadikan, who died in a motor vehicle accident on 6.7.2003.

4. Based on the pleadings of the parties the Tribunal framed the following issues:

1. Whether on 6.7.2002 at about 7 AM near village Harraipur, the respondent No. 1 was driving the Jeep No. HP-02-4572 rashly and negligently and as such caused death of Smt. Sadikan? OPP

2. If issue No. 1 is proved, to what amount of compensation, the petitioner is entitled to and from whom? OPP

3. Whether there is no privity of contract between the respondent No. 1 and respondent No. 2? OPR-2

4. Whether the policy is in the name of Sh. Sunil Kumar and the respondent No. 2 is not liable to indemnify the respondent No. 1? OPR-2

5. Whether the vehicle No. HP-02-4572 did not have valid route permit and was not fit to be driven at public place? OPR-2

6. Whether the driver of the vehicle was not having valid driving licence at the time of accident? OPR-2

7. Relief.

5. The Tribunal found Sh. Des Raj, driver of Jeep No. HP-02 4572 to have driven the vehicle in a rash and negligent manner which was the cause of the accident in which Smt. Sadikan died. The claimant being a dependent legal heir was held entitled to compensation of Rs. 2,18,000/- alongwith interest. The driver was found to have been possessed with a valid and effective driving licence (Ext. RW 1/B) but however since the insurance policy (Ext.RW2/A) continued to be in the name of Sh. Sunil Kumar and not in the name of Sh. Des Raj owner/drive of the vehicle hence the insurer, M/s United India Insurance Company Ltd. was held not liable to indemnify the present appellant.

6. The findings on issues No. 3 and 4 as recorded by the Tribunal are reproduced in totality as under:

Issue No. 3:

0. Per Ex. RW2/A insurance policy the Jeep in question was insured with the respondent No. 2 during the period 4.3.2003 to 3.3.2004. However, this insurance is in the name of Sh. Sunil Kumar and not in the name of the respondent No. 1. Therefore, it is evident that there is no privity of contract between the respondents No. 1 and 2 and as such the amount of compensation is not liable to be indemnified by the respondent No. 2 on behalf of the respondent No. 1. This issue is decided in favour of the respondent No. 2.

Issue No. 4:

21. The Jeep No. HP-02-4572 was insured with the respondent No. 2 during the period 4.3.2003 to 3.3.2004 in the name of Sh. Sunil Kumar. This makes it evident that the vehicle was not insured in the name of the respondent No. 1. Therefore, the respondent No. 2 is not liable to indemnify the award amount on behalf of the respondent No. 1. This issue is decided in favour of the respondent No. 2.

7. Section 157 of the Act reads as under:

Transfer of certificate of insurance - (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

[Explanation. - For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

The Apex Court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, has held that "The liability of an insurer u/s 103-A of the 1939 Act did not cease even if the owner or purchaser fails to give intimation of transfer to the Insurance Company, as the purpose of the legislation was to protect the rights and interests of the third party. Thus the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether u/s 103-A of the 1939 Act or u/s 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts of the present case or the new Act applies, as far as the deceased third party was concerned, the result would not be different.

8. Admittedly the claimant herein is the third party. Hence the findings returned by the Tribunal being contrary to the law laid down by the Apex Court are illegal and are set aside and reversed. The fairness with which Sh. Harish Behl, learned Counsel for the insurer, conducted the matter is highly appreciable.

9. The vehicle having been insured with the insurer and no terms of the policy having been breached in any manner, the insurer is liable to indemnify the insured and pay the compensation awarded in favour of the claimant. The impugned award is accordingly modified.