(2016) 12 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : FAO No. 366 of 2012

ICICI Lombard General Insurance Co. Ltd. — APPELLANT

Vs

Parul Sharma — RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, Section 163A, Section 166

Citation : (2017) AAC 1406 : (2017) 1 SimLC 454

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Appellant; Mr. Neeraj Gupta, Advocate, for the Respondent Nos. 1 to 3; Nemo, for the Respondent No. 4

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J.—By the medium of this appeal, the appellantinsurer has called in question award, dated 21st April, 2012, made by the Motor Accident Claims Tribunal-cum-Presiding Officer, Fast Track Court, Mandi, District Mandi, H.P. (for short "the Tribunal") in Claim Petition No. 26/2010, titled as Parul Sharma and others v. ICICI Lombard Insurance Co. Pvt. Ltd. and another, whereby compensation to the tune of Rs. 4,48,900/- with interest @ 7.5% per annum from the date of the petition till its realization came to be awarded in favour of the claimants and the insurer was saddled with liability (for short "the impugned award"), on the grounds taken in the memo of the appeal.

2. In order to determine this appeal, it is necessary to give a brief resume of the facts of the case, the womb of which has given birth to the appeal in hand.

3. Deceased Vijay Sharma, while driving the car, bearing registration No. HP33 A9112 on 19th January, 2010, met with an accident at about 10.00 P.M. near Tata Motors Lunapani, while going from Sunder nagar to Mandi, due to which he sustained injuries, was taken to Harihar Hospital, Gutkar, from where he was

referred to PGI Chandigarh, where he remained admitted and succumbed to the said injuries on 31st January, 2010.

4. The legal representatives of deceased Vijay Sharma invoked the jurisdiction of the Tribunal under Section 163A of the Motor Vehicles Act, 1988 (for short "MV Act") and sought compensation to the tune of Rs. 20,00,000/-, as per the breakups given in the claim petition.

5. The respondents in the claim petition resisted the same on the grounds taken in the respective memo of objections.

6. On the pleadings of the parties, following issues came to be framed by the Tribunal on 10th May, 2011:

"1. Whether the petitioners being legal representatives/dependants of deceased Sh. Vijay Sharma, are entitled for grant of compensation, if so to what amount and from which of the respondents? OPP

2. Whether the petition is not maintainable and sustainable as alleged? OPR1

3. Whether there is any violation of terms and conditions of insurance policy, if so its effect? OPR1

4. Relief."

7. In support of their claim, one of the claimants, namely Smt. Parul Sharma, stepped into the witness box as PW1. The owner-insured, namely Shri Dina Nath Sharma, examined Shri Man Singh as RW2 and himself stepped into the witness box as RW1. The insurer has not led any evidence.

8. The Tribunal, after scanning the evidence, oral as well as documentary, decided issue No. 1 in favour of the claimants and against the respondents. Issues No. 2 and 3 also came to be decided against the insurer on the ground that it has not led any evidence and compensation to the tune of Rs. 4,48,900/- with interest @ 7.5% per annum from the date of the claim petition till its realization was granted in favour of the claimants.

9. The claimants and the owner-insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

10. The appellant-insurer has called in question the impugned award on the ground that the Tribunal has fallen in an error in saddling it with liability.

11. Learned counsel appearing on behalf of the appellant-insurer argued that deceased Vijay Sharma, who was the son of owner-insured of the offending vehicle, was in possession and control of the offending vehicle, was driving the same at the time of the accident and had stepped into the shoes of the owner. Further argued that deceased Vijay Sharma was driving the offending vehicle rashly and negligently at the time of the accident, thus, the claim petition was not maintainable.

12. Learned counsel appearing on behalf of claimants-respondents No. 1 to 3 argued that the claimants are the victims of the vehicular accident, the claim petition was maintainable and the Tribunal has rightly passed the impugned award.

13. I have heard the learned counsel for the parties and gone through the record.

14. The owner-insured of the offending vehicle has specifically averred in the reply that he had parked the offending vehicle in his garage due to some mechanical defect. Further averred that he had engaged the services of a mechanic, namely Man Singh (RW2), who could not repair the same as he had to import some part of the vehicle from outside and had specifically directed not to ply the vehicle till the defect was removed. The owner-insured had gone to his village on 18th January, 2010 and had to return on 20th January, 2010.

15. The fact that deceased Vijay Sharma had taken the offending vehicle at the relevant point of time without permission of his father, Dina Nath Sharma and was driving the same at the time when it met with an accident, in which he lost his life, is not denied.

16. The question is whether deceased Vijay Sharma can be treated as a third party?

17. Admittedly, deceased Vijay Sharma was driving the offending vehicle at the time of the accident, which belonged to his father and was registered and insured in the name of his father. He was not engaged as a driver of the offending vehicle, thus, was driving the offending vehicle in the capacity of the son of the owner-insured and the vehicle was in his possession and control at the relevant point of time. Meaning thereby, deceased Vijay Sharma had stepped into the shoes of the owner.

18. My this view is fortified by the judgment rendered by the Apex Court in the case titled as Ningamma and another v. United India Insurance Co. Ltd., reported in 2009 ACJ 2020. It is apt to reproduce para 18 of the judgment herein:

"18. In the case of Oriental Insurance Co. Ltd. v. Rajni Devi, 2008 ACJ 1441, wherein one of us, namely, Hon''ble Justice S.B. Sinha is a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under Section 163A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was authorised to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike."

19. Now, the question is - whether the claimants, being the legal representatives of deceased Vijay Sharma, are entitled to compensation?

20. The Apex Court in Ningamma''s case (supra) remanded the matter for rendering the decision in accordance with law after determining certain questions of fact involved in the case including the applicability of the provisions of Section 147 of the MV Act, while holding that the MV Act is a beneficial and welfare legislation and in terms of Section 166 of the MV Act, the Court is duty bound to award just compensation irrespective of the fact whether any plea in that behalf was raised by the claimants or not. It is profitable to reproduce paras 21, 22, 25 and 26 of the judgment herein:

"21. Section 147 of the MVA provides that the policy of insurance could also cover cases against any liability which may be incurred by the insurer in respect of death or fatal injury to any person including owner of the vehicle or his authorised representative carried in the vehicle or arising out of the use of vehicle in the public place.

22. When we analyse the impugned judgment of the High Court in terms of aforesaid discussion, we find that the counsel for the insurance company himself contended before the High Court that the policy of insurance was an Act policy and the risk that is covered is only in respect of persons contemplated under Section 147 of the MVA. It is the finding of fact which we have also upheld in this Judgment that the deceased was authorised by the owner of the vehicle to drive the vehicle. When we examined the facts of the present case in view of the aforesaid submission made, we are of the opinion that such an issue was required to be considered by the High Court in the light of the facts and evidence adduced in the case. On consideration of the Judgment and Order passed by the High Court we find the same to be sketchy on the aforesaid issue as to whether the claim could be considered under the provisions of Section 166 of the MVA. In this connection, reference can be made to a judgment of this Court in the case of Oriental Insurance Company Ltd. v. Rajni Devi and Ors. (supra), wherein, it was held that where compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.

23. ....

24. ....

25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court.

26. While entertaining the appeal, no effort was made by the High Court to deal with the aforesaid issues, and therefore, we are of the considered opinion that the present case should be remanded back to the High Court to give its decision on the aforesaid issues. The High Court was required to consider the aforesaid issues even if it found that the provision of Section 163A of MVA was not applicable to the facts and circumstances of the present case. Since all the aforesaid issues are purely questions of fact, we do not propose to deal with these issues and we send the matter back to the High Court for dealing with the said issues and to render its decision in accordance with law. The High Court will also consider the question of quantum of compensation, if any, to which the claimants might be entitled to, having regard to the earning capacity of the deceased and "Just Compensation", if any. Since the claim is a very old claim, we request the High Court to consider the matter as expeditiously as possible."

21. The Apex Court in the case titled as Oriental Insurance Co. Ltd. v. Rajni Devi and others, reported in 2008 ACJ 1441, held that where compensation is claimed for the death of the owner or another passenger of the vehicle, the claim of the insurance company would depend upon the terms of the insurance policy. It is worthwhile to reproduce paras 6 and 11 of the judgment herein:

"6. It is now a well settled principle of law that in a case where third party is involved, the liability of the insurance company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of insurance being governed by the contract qua contract, the claim of the insurance company would depend upon the terms thereof.

7 to 10. ....

11. According to the terms of contract of insurance, the liability of the insurance company was confined to Rs. 1,00,000 (rupees one lakh). It was liable to the said extent and not any sum exceeding the said amount."

22. Applying the test to the instant case, the insurance policy of the offending

vehicle is on the record as Ext. R1E, the perusal of which does disclose that the owner-insured has paid extra premium covering the insurance of the owner to the extent of Rs. 2,00,000/-. As discussed here-in-above, deceased Vijay Sharma had stepped into the shoes of the owner, thus, his risk was covered to the extent of Rs. 2,00,000/- and the claimants, being the legal representatives of the owner, are entitled to compensation only in terms of the conditions contained in the insurance policy.

23. Viewed thus, it is held that the claimants are entitled to compensation to the tune of Rs. 2,00,000/- with interest @ 7.5% per annum from the date of the claim petition till its finalization.

24. Having glance of the above discussions, the impugned award is modified and the appeal is allowed, as indicated here-in-above.

25. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee''s account cheque or by depositing the same in their respective bank accounts after proper identification.

26. Excess amount, if any, be refunded to the appellant-in-surer through payee''s account cheque.

27. Send down the record after placing copy of the judgment on the Tribunal''s file.