
(2016) 10 SHI CK 0057
In the High Court Of Himachal Pradesh
Case No : FAO No. 389 of 2011

ICICI Lombard General Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Kalawati	RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2017) AAC 8 : (2016) sup HimLR 2986

Hon'ble Judges : Mr. Chander Bhusan Barowalia, J.

Bench : Single Bench

Advocate : Nemo for the remaining respondents, for the Respondents Nos. 1 and 2; Mr. Lovneesh Thakur, Advocate vice Mr. Amar Deep Singh, Advocate, for the Respondents; Mr. Jagdish Thakur, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Chander Bhusan Barowalia, J. - The present appeal is maintained by the appellant-ICICI Lombard General Insurance Company Limited, who was respondent No. 3 before the learned Tribunal below (hereinafter referred to as "the appellant"), under Section 173 of the Motor Vehicles Act, 1988 (as amended by the Act of 1994) (hereinafter referred to as "the Act") against the award dated 01.08.2011, passed by the Motor Accident Claims Tribunal-I, Sirmaur District at Nahan, H.P., in M.A.C. Petition No. 60-MAC/2 of 2009.

2. Briefly stating the facts giving rise to the present appeal are that respondents No. 1 and 2/claimants, who were the petitioners before the learned Tribunal below (hereinafter referred to as "the claimants"), maintained a petition under Section 166 of the Act against the appellant/Insurance Company, respondents No. 3 and 4 herein, who were respondents No. 1 and 2, respectively, being owner and driver of the ill fated vehicle, which met with an accident, (hereinafter referred to as "respondents No. 1 and 2") for compensation on account of death of son of claimant No. 1, Smt. Kalawati, and brother of claimant No. 2, Shri Balwant Singh, which was caused due to the rash and negligent driving of

respondent No. 2 while driving the vehicle, bearing registration No. HP 18-B-0203 (pick up) owned by respondent No. 1.

3. As per the petitioners on 19.06.2009 Shri Sampuran Singh (deceased), who is son of claimant No. 1 and brother of claimant No. 2, was traveling in Pick Up, bearing registration No. HP-18-B-0203 and he had died in motor vehicle accident which occurred at about 11:30 p.m involving the above said pick-up near Thana Kashoga Temple, Tehsil Nahan. FIR, Ex. PW-1/B, was registered qua the accident at Police Station, Nahan. Post mortem of the deceased was also conducted and the post mortem report is Ex. PW-1/C. The deceased had died due to rash and negligent driving of the respondent No. 2 the claimants have sought compensation on account of loss of earnings to the family, as he was earning from his avocation as businessman. It is further averred in the claim petition before the learned Tribunal below that the deceased was a meritorious student and he had done Bachelor of Physical Education in 2008 from Nagpur and he was likely to get the job of Physical Education Teacher and would have earned more than Rs. 15,000/- per month. It is further pleaded that the deceased was running a daily need items shop in the village and was earning Rs. 5000/- per month. Lastly, the claimants have claimed compensation to the tune of rupees five lac from the respondents.

4. On the other hands, the respondents, by filing separate replies, contested and resisted the claim petition. Respondent No. 1 (owner of the vehicle) contended that as he was not present at the time of the accident, he cannot disclose about the cause of accident. Respondents No. 1 and 1 and 2 have admitted the occurrence of the accident and registration of the FIR. However, they have denied the rest of the averments made in the claim petition and have contended that the claimants are not entitled to any compensation from the replying respondents. Respondent No. 1 has also contended the offending vehicle was duly insured with respondent No. 3 (Insurance Company) and if any compensation is to be paid, it is the liability of the Insurance Company.

5. Respondent No. 3/Insurance company, by filing reply, has raised preliminary objection viz., deceased being unauthorized passenger in the vehicle, the driver of the vehicle did not possess any valid and effective driving licence and the vehicle was being plied in violation of terms and conditions of insurance police. The Insurance Company has contended that claim petition has been filed in collusion with respondents No. 1 and 2. On merits, the factum of accident has been denied and it is contended that a false report has been manipulated in order get undue compensation. The compensation claimed was stated to be disproportionate and rest of the averments made in the claim petition were denied.

6. The learned Tribunal below has framed the following issues:

"1. Whether Sampuran Singh died on account of rash or negligent driving of Pick-up bearing No. HP-18B-0203 driven by respondent No. 2 Devender Singh on

19.06.2009 at about 11.30 PM near Thana Kashoga Temple, as alleged? OPP.

2. In case issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled to and from whom? OPP.

3. Whether the deceased was an unauthorized passenger and his risk was not covered under the insurance policy, as alleged? OPR-3

4. Whether the driver of the vehicle in question did not possess a valid and effective driving licence and the vehicle was being plied in violation of the terms and conditions of insurance policy, as alleged? OPR-3

5. Whether the petition has been filed in collusion with respondents No. 1 and 2, as alleged? OPR-3

6. Relief."

After deciding issues No. 1 and 2 in favour of the claimants and issues No. 3 to 5 against respondent No. 3/Insurance Company, the claim petition was allowed in favour of claimant No. 1 (mother of the deceased). Hence the present appeal.

7. Learned counsel for the appellant has argued that the vehicle met with an accident. However, the deceased was a gratuitous passenger. He has argued that there were no goods in the vehicle and the deceased could not be taken as owner of the goods. On this count he has argued that the appeal is required to be allowed. He has further argued that the deceased was the son of the owner and he could not be said to be owner of the goods. On the other hand, learned counsel appearing for the claimants has argued that the deceased was traveling in the vehicle not as a gratuitous passenger, but he was going to Paonta Sahib to bring tires.

8. I have heard the learned counsel for the parties and gone through the record in detail.

9. Smt. Kalawati (PW-1), the mother of the deceased, and Shri Govind Sharma (PW-2) have stated that the accident has occurred due to the rash and negligent driving of the vehicle. They have further stated that the vehicle went off the road without their being any mechanical defect and the deceased died in the accident. The statements of these witnesses themselves make it clear that the vehicle met with an accident due to the rash and negligent driving of the driver of the vehicle. The principle of *res ipsa loquitur* is applicable to the facts of the present case. On the other hand, the owner and driver of the vehicle have not adduced any evidence to discharge the onus on them to prove that the vehicle had not met with an accident due to the rash and negligent driving of the driver. As the owner and driver of the vehicle (respondents No. 1 and 2, respectively, herein) have failed to discharge the onus to prove the issue against them and as the vehicle has fallen from the road due to the rash and negligent driving of the driver, the only conclusion is that the vehicle met with an accident due to the rash and negligent driving of the driver.

10. Now coming to the fact that whether the deceased was traveling in the vehicle as a gratuitous passenger, as claimed by respondent No. 3/Insurance Company, the evidence on record shows that the deceased was traveling in the vehicle for bringing new tires for the vehicle on behalf of the owner/respondent No. 1. On the other hand, the onus to prove this issue was on respondent No. 3/Insurance Company, but it did not lead any evidence to discharge the onus and prove the issue when the positive evidence to the effect that the deceased was not traveling in the vehicle as a gratuitous passenger, then it was incumbent upon the Insurance Company to have led any reliable and cogent evidence to prove that the deceased was traveling as a gratuitous passenger. As the present is a beneficial legislation and positive evidence has also come that the deceased was traveling in the vehicle as an agent of the owner to bring the tires on behalf of the owner from Paonta Sahib and in the absence of any evidence on behalf of respondent No. 3/Insurance Company to discharge the onus, this Court finds it difficult to hold otherwise, then as held by the learned Tribunal below that the deceased was a gratuitous passenger, therefore, the findings of the learned Tribunal below holding that the deceased was not a gratuitous passenger, requires no interference.

11. As far as the quantum is concerned, the learned counsel for the claimants has argued that taking into consideration the age, prospects of life and educational qualifications of the deceased, the quantum is very much on the lower side and the multiplier is also quite on the lower side, but no appeal or cross-objection has been filed by the claimants, therefore, this Court finds that in the absence of any appeal or cross-objection, findings of the learned Tribunal below, on this score, are not required to be disturbed.

12. In a nut shell, the result of the above discussion is that the appeal is devoid of merits and deserves dismissal and is accordingly dismissed, however, with no orders as to costs.

13. In view of the above, the appeal stands disposed of, as also pending application(s), if any.