
(2016) 07 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : FAO No. 422 of 2010

ICICI Lombard General Insurance Company Limited	APPELLANT
Vs	
Smt. Soni Devi	RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 2126 : (2016) 4 HimLR 1994

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

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Appellants; Mr. Bhupinder Ahuja, Advocate, for the Respondents No. 1 to 5; Mr. Sanjay Jaswal, Advocate, for the Respondents No. 6; Mr. Praneet Gupta, Advocate, for the Respondents No. 7

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J.—The present appeal under Section 173 of the Motor Vehicles Act, 1988, is maintained against the award dated 9.7.2010, passed by learned Motor Accident Claims Tribunal-I, Kangra at Dharamshala, in Claim Petition No. 36-P/II/2007, filed by respondents/petitioners No.1 to 5 (hereinafter referred to as ?petitioner?) against the owner-cum-driver of the Tata 407 LCV (Tempo)/respondent No.6 (hereinafter referred to as ?respondent No.1?) and New India Insurance Company, the insurer of the scooter on which the deceased was a pillion rider (hereinafter referred to as ?respondent No.3?).

2. The brief facts giving rise to the present appeal are that on 19.5.2007, the deceased along with one Ashok Kumar were going on a scooter and the scooter was on the extreme left side of National Highway and the deceased was a pillion ride. The scooter had reached near a place called 61 Miles, then a vehicle TATA 407 LCV (Tempo) applied for, came from Palampur side in such a rash and negligent manner driven by respondent No.1 and struck against the scooter. As a result of which, the deceased and pillion rider fell down on the road. The

deceased received multiple injuries on his person, he was taken immediately to Community Health Centre, Nagrota Bagwan, on reaching in the hospital, the deceased was declared dead. The post mortem of the dead body of the deceased was conducted by Medical Officer.

3. Further, case of the petitioner is that the accident occurred due to the rash and negligent driving of the vehicle by respondent No.1. It is pleaded that deceased was 28 years of age and was working as Sepoy in the Indian Army and getting the salary of Rs. 9000/- per month. Petitioner No.1 is the widow, petitioner No. 2 and 3 are the parents, petitioner No.4 and 5 are the minor daughters of the deceased and were dependant upon the deceased.

4. Reply was filed by respondent No.1 and denied the accident. It is the case of respondent No.1 that deceased was driving the scooter without having a valid and effective driving licence to drive the same. It is further pleaded that deceased was never struck by the vehicle of respondent No.1.

5. Respondent No.2 also filed the reply and their case is that driver and owner of the vehicle TATA 407 LCV (Tempo) of respondent No.1, was not having a valid and effective driving licence at the time of alleged accident and the vehicle was being plied in violation of the terms and conditions of the Insurance Policy. Respondent No.3 had also filed reply and denied their case.

6. The learned Court below framed the following issues on 30.6.2008, as under:

1. Whether Sunil Kumar had died on account of rash and negligent driving of vehicle No. HP- 14-A-9408 by respondent No.1 ? OPP.

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

3. Whether the respondent No.1 had not been in possession of valid & effective driving licence ? If so with what effect ? OPR-2.

4. Whether the claim petition is bad for nonjoinder and mis-joinder of parties ? OPR-2.

5. Relief.

7. After deciding Issue No. 1 in favour of the petitioner, the learned Tribunal held that the petitioners are entitled for an amount of Rs. 15,00,000/- (rupees fifteen lacs) to be paid by respondent No.2.

8. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

9. To prove their case, the petitioner has examined PW-1 HC Kuldeep Singh. He has deposed that an FIR was registered on 19.5.2007, under Sections 279, 337, 338 and 304-A of the Indian Penal Code, against respondent No.1 driver of Tempo bearing No. HP-9408 and challan was presented before the learned Court below. He has further stated that Tempo was not registered at the time of

accident, however it was applied for.

10. PW-2 Milap Chand/Photographer, has stated that on 19.5.2007 at about 3:30 pm, he was on his way from Darang to Kangra on scooter. He deposed that Tempo of respondent No.2 over took him in a high speed at a place called as 61 Miles and after travelling a distance of 100 meters ahead it struck with a scooter. The tempo at that time was driven by respondent No.1 and the scooter was being driven by Sunil Kumar while the deceased was a pillion rider. He has stated that tempo struck with the scooter with such a force that scooter was dragged upto a distance of 5-6 meters. He has also deposed that he stopped his scooter and took the injured to hospital where Sunil Kumar succumbed to injuries. He deposed that after the accident Chander Kumar had fled away from the spot. He deposed that deceased had sustained head injuries. The accident was caused due to the rash and negligent driving of tempo driver and there was no fault on the part of scooter driver.

11. PW-3 Smt. Soni Devi, has stated that name of her husband was Sunil Kumar and at the time of accident his age was 28 years. She has stated that her husband was employed as Sepoy in Assam Rifles. She deposed that her husband came home on leave and on 19.5.2007 at 3:30 pm, accident took place near at a place called 61 Miles in which her husband died. She has stated that driver of tempo 407 had hit his tempo with her husband and the accident was caused due to the rash and negligent driving of tempo driver. She has stated that her husband used to draw salary of Rs. 9384/- per month, as per salary slip Ex. PW2/A. She has stated that she has two minor daughters and petitioners were dependant upon the deceased. She has stated that she was not present at the time of accident. She has admitted that she used to get family pension. She has denied that the accident was caused due to the fault of her husband.

12. PW-4 Jai Singh, is father of the deceased and stated that his son died on 19.5.2007, due to the rash and negligent driving of vehicle by its driver. He has stated that he had served in Indian Army for 28 years and retired as a Subedar. He has stated that his son was brilliant and had he been alive he would have retired with some good rank. He has stated that accident did not take place in his presence.

13. PW-5 Dr. Vivek Sood, has stated that in the year 2007, he remained posted as Registrar in RPGMC, Tanda. He conducted the post mortem examination on the body of Sunil Kumar. He has stated that injuries mentioned in the post mortem report could be possible in the road side accident.

14. To rebut the evidence of petitioner, RW-1 Chander Kumar has stated that he is owner-cum-driver of TATA-407 and was having valid driving licence to drive the vehicle in question. He has stated that his vehicle was insured vide insurance policy Ex. RW1/A. He has deposed that photocopy of Registration Certificate is Ex. RW2/B. He has deposed that accident did not take place due to his fault, but the same took place due to the fault of scooter driver who had driven the scooter

in a rash and negligent manner. He has admitted that when he purchased the vehicle on 18.5.2007, its temporary number was HP-9408. He had admitted that two persons had travelled on the scooter at the time of accident and one of them had died.

15. RW-2 Munshi Ram, Licence Clerk posted in the office of Motor Licensing Authority, Kangra, has stated that driving licence No. 11096/SDMK dated 2.5.2001, which was issued for Light Motor Vehicle. As per record this licence was renewed w.e.f. 9.5.2004 to 8.5.2007 and copy of the same is Ex. RW2/A. He has stated that licence was renewed in the name of Chander Kumar for LMV, which is Ex. RW2/B. In cross-examination, he has admitted that licence No.11096 was issued in favour of Chander Kumar for LMV (Transport) and the same was renewed w.e.f. 8.5.2004 to 8.5.2007. He has deposed that driving licence was further renewed on 21.5.2007.

16. RW-3 Jagdish Kumar, Clerk, posted in the office of RTO, Dharamshala, has stated Chander Kumar was not authorised to carry goods in the vehicle in question. He has stated that the said vehicle was passed on 5.6.2007. He has admitted that temporary registration number is valid for one month for plying the vehicle. He has admitted that route permit is issued after the grant of fitness certificate. He has also admitted that owner of the vehicle in question had applied within one month after the purchase of said vehicle for issuance of fitness certificate and route permit thereof.

17. Thus, it is evident from the testimony of PW-3, Soni Devi, is corroborated by PW-2, Milap Singh an eye witness of the alleged accident. PW-2 has specifically stated that deceased had died due to the rash and negligent driving of vehicle bearing Tempo No. HP- 9408 and also stated that his statement was also recorded by the police. The testimony of PW-3 is further corroborated by PW-1 HC Kuldeep Singh. He has deposed that FIR was registered against Chander Kumar, owner-cum-driver of vehicle having Tempo bearing No. HP-9408. PW-5 Dr. Vivek Sood, has conducted the postmortem of deceased Sunil Kumar and proved the copy of post mortem report. He has also stated that injuries mentioned in the post mortem report are possible in motor vehicle accident. The testimony of PW-3 is further corroborated by documentary evidence i.e. FIR Ex. PW1/A. There is no reason to disbelieve the testimony of PWs 1 to 5. Respondents No. 1 to 3 did not adduce any independent, cogent and reliable evidence in order to prove their case. There is no evidence on record to show that respondent No.1 was not driving the vehicle in a rash and negligent manner.

18. From the above, it is clear that the deceased had died because of the rash and negligent driving of respondent No.1. It has come on record that respondent No.1 was so rash and negligent that after over taking the scooter of PW-2 had struck the scooter, on which the deceased was pillion rider at a place 61 Miles and the same resulted into the death of deceased.

19. Learned counsel for the appellant has argued that the driving licence was not

containing endorsement for driving the transport vehicle, as the vehicle was Light Motor Vehicle. So, the driver was having valid and effective driving licence to drive the vehicle in question. This Court finds no force in the submissions made by learned counsel for the appellant.

20. Further, learned counsel for the appellant has argued that the vehicle was Light Motor vehicle, but from the Registration Certificate, it is clear that unladen weight of the vehicle is 2560 Kgs. less than 3000 Kgs., the conclusion is that it was a Light Motor Vehicle. Respondent No.1 was having valid driving licence and the vehicle was Light Motor Vehicle. The learned Court below has rightly held that the accident has taken place because of the rash and negligent driving of respondent No.1 and respondent No.2 is liable to pay the compensation being insurer of the vehicle. Learned counsel for the appellant has also argued that the vehicle was driven without any route permit and registration certificate, but it is clear from the record that the vehicle was new one, it was purchased just a day before. It has also come on record that respondent No.1 has applied for the vehicle registration, the fitness certificate for getting route permit and for the Registration Certificate. In these circumstances, the award passed by the learned Court below holding that the vehicle was being plied as per the terms and conditions of the insurance policy is just reasoned and needs no interference.

21. Hon"ble Supreme Court of India in (2004) 3 Supreme Court Cases 297, titled National Insurance Co. Ltd. v. Swaran Singh and others, has held as under :

"17. Before we deal with various contentions raised by the parties it is desirable to look into the legislative history of the provisions for their interpretation. The relevant provisions of the Act indisputably are beneficent to the claimant. They are in the nature of a social welfare legislation.

18. Chapter XI of the Motor Vehicles Act, 1988, inter alia, provides for compulsory insurance of vehicles in relation to the matters specified therefor. The provision for compulsory insurance indisputably has been made, inter alia, with a view to protect the right of a third party.

19. This Court in Sohan Lal Passi noted (SCC p.28, para 10)

"10. The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving, innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background, the question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someones negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, has introduced several beneficial provisions to protect the interest of

the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident."

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110. The summary of our findings to the various issues as raised in these petitions is as follows :

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object."

22. Learned counsel for the appellant has further argued that the deceased was getting salary of Rs. 9000/- per month and after giving 7rd personal expenses of the deceased, the dependency cannot be more than Rs. 6000/-. After applying multiplier of 17 and taking into consideration the age of deceased it was 28 years, the compensation comes much less than Rs. 15,00,000/- (rupees fifteen lacs only), the learned Tribunal below has not awarded reasonable compensation.

23. To appreciate the arguments of learned counsel for the appellant, I have gone through the income certificate of the deceased, the salary of the deceased was Rs. 9384/-. The deceased was getting increments from time to time throughout his service career. Taking into consideration the future increase in income, 50% increase is required to be given in the current salary of the deceased for calculating the loss on account of dependency. So, the salary of the deceased for calculating the dependency becomes Rs. 15,000/- and 7rd becomes Rs. 5000/-. After deducting the personal expenses of the deceased i.e. 7rd (Rs.5,000/-), this Court finds that the compensation has awarded by the learned Court below i.e. Rs. 14,72,000/-, (rupees fourteen lacs and seventy two thousand only) is just and reasoned. So, this Court finds that the amount awarded to the petitioners as compensation is just and reasonable.

24. The net result of the above discussion is that the appeal is devoid of any merit and the same is dismissed. Pending application (s), if any, shall also stands disposed of. No order as to costs.