
(2017) 05 SHI CK 0113
In the High Court Of Himachal Pradesh
Case No : 74 of 2012

IFFCO-TOKIO Gen. Insurance Co. Ltd.

APPELLANT

Vs

Smt. Sarla Thaper & Ors.

RESPONDENT

Date of Decision : 23-05-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#), [Section 166](#), [Section 166](#) - Appeals - Application for compensation

Citation : (2017) 05 SHI CK 0113

Hon'ble Judges : Tarlok Singh Chauhan

Bench : Single Bench

Advocate : Virender Sharma, Bhupender Pathania, I.N. Mehta, Satyen Vaidya, Vivek Sharma

Final Decision : Allowed

Judgement

1. This petition under Section 173 of the Motor Vehicles Act, 1988 (for short "Act") has been preferred by the insurance company, whereby the liability to make payment of the award dated 13.12.2011, passed by the Motor Accidents Claims Tribunal, Shimla, (for short "Tribunal"), fastened upon it.

2. Respondent No. 1 is the claimant who filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of injuries sustained by her in an accident while travelling in Maruti Car bearing No. HP-09A-0693, which was allegedly hit by Armada Jeep bearing No. HP-51B-2277. It was alleged that the driver of the Armada Jeep was driving the same in a rash and negligent manner which caused the accident, as a result of which, the claimant sustained injuries.

3. The owner and driver of the Armada Jeep filed a joint reply, whereby, admitted the ownership of the vehicle, however, it is claimed that the driver of the vehicle Roshan Lal had been driving the same with due care and caution and it was the Maruti car bearing No. HP-09A-0693, which, in turn, was being driven in a rash

and negligent manner and struck against the vehicle No. HP-51B- 2277 of the respondent.

4. As regards the appellant-IFFCO-TOKIO Gen. Insurance Co. Ltd-respondent No. 3 in claim petition, it had filed a separate reply, wherein, it was alleged that the driver of the Armada Jeep was not responsible for the accident rather it was the driver of the vehicle of the claimant, who was liable to pay compensation amount on account of his negligence. It was thereafter stated that both the drivers of the vehicles were not having valid & effective driving licence and they have been plying their vehicles contrary to the terms of the policy.

5. As observed above, the learned Tribunal allowed the petition and awarded a compensation of Rs.6,00,000/- and fastened the liability to pay the same upon the appellant. Aggrieved thereby, the appellant insurance company has filed the instant appeal.

6. It is vehemently argued by Shri Virender Sharma, learned Advocate, that the learned Tribunal below in a very cursory manner dealt with the entire case that too without even discussing the relevant testimony and erred in fastening award liability upon the appellant. Whereas the learned counsel for the respondents would obviously support the award. I have heard learned counsel for the parties and have gone through the records of the case.

7. At the outset, it would be noticed that the appellant in its reply raised the objections with respect to breach of terms and conditions of the policy. It would be noticed that the driver in the instant appeal, as arrayed by the claimant, is one Roshan Lal. Even the owner of the vehicle HP-51B-2277 Ram Krishan (RW1) had admitted that an FIR regarding the accident had been registered against Roshan Lal and his statement has been recorded.

8. It would further be noticed that in so far as the FIR is concerned, the same culminated into a charge-sheet and in the trial so conducted by the learned Judicial Magistrate Ist Class, Shimla, the owner Ram Krishan appeared as a witness and categorically stated that at the time of accident his vehicle was being driven by one Bhim Bahadur and not by Roshan Lal.

9. This statement is available on record as Ext.R1. Surprisingly, the learned Tribunal has not even bothered to make a mention of this document, much less, discuss the same.

10. Adverting to Ext.R1, it would be noticed that the owner of the vehicle Ram Krishan had in his statement deposed as under:- "VERNACULAR MATTER OMITTED"

This portion of the statement has been put to the witness and marked as portion A to A in his cross-examination.

11. Like wise in his cross-examination, he stated as under:- "VERNACULAR MATTER OMITTED"

The extracted portion has been put to the witness and has been marked as portion B to B.

12. In the present proceedings, while being cross-examined by the insurance company, the owner of the vehicle candidly admitted that the statement Ext. R1 had been recorded before the learned Magistrate which bore his signature encircled as "A". With respect to the portion A to A, he tried to come out of it by stating that such statement was wrong. Likewise, he admitted that his statement B to B has been correct but then would try to qualify the same by saying that the statement given before the Tribunal was correct.

13. Obviously, in teeth of the statements, made before the learned Magistrate, and one given before the learned Tribunal, the owner of the vehicle is trying to play hide and seek with the Court which is not permissible in law.

14. Not only this, Roshan Lal, who was the accused in the criminal case, has appeared as RW2 and has tried to support the version put-forth by him in his reply to the effect that it was he on the fateful day was driving the vehicle and denied the suggestion that it was Bhim Bahadur, who was driving the vehicle on the said day, which was contrary to the defence put up by the owner of the vehicle Ram Krishan before the criminal court.

15. Surprisingly none of the aforesaid facts have been taken note of by the learned Tribunal below as would be evident from the discussion made in para 10 of the award, which reads thus:- "10. As against the evidence of the petitioner, the respondent No. 1 had entered the witness box. RW-1 Sh. Ram Krishan, respondent No. 1 had stated that the respondent No. 2 had been driving vehicle No. HP-51B-2277 with due care and caution. The petitioner in collusion with her men had instituted false case of rash and negligent driving against the respondent No. 2. RW-1 had tendered in evidence driving licence of respondent No. 2 and documents of the vehicle. RW-2 Sh. Roshan Lal, respondent No. 2 had attributed the accident to PW- 3."

16. That apart, the learned Tribunal below has held Roshan Lal to be driving the vehicle by according following reasons: "The respondent No. 2 had been booked on charges of rash and negligent driving by the local police immediately after the accident. Due weight was liable to be attached to the first version of the accident recorded in the FIR. Since respondent No. 2 had been facing charges of rash and negligent driving in the Court of competent jurisdiction, he was not expected to admit his liability for the accident."

17. It is more than settled that one cannot be permitted to appropriate and reprobate. Nor can he be permitted to resile from his earlier stand and admission made by him in the entire proceedings are binding on him proprio vigor. He at a subsequent stage should not be permitted to resile or explain away the same as the admission create a valuable right in favour of the opposite party and if it is not even strictly res judicata between the parties, it creates an estoppel against the party to make a contrary plea at a subsequent stage. After all, it is more

than settled that the admission is the best evidence that the opposing party can rely upon though inconclusion is decisive of the matter unless successfully withdrawn or proved erroneous.

18. Shri Satyen Vaidya, Sr. Advocate, has though tried to impress upon the Court that the statement Ext.R1 has not been duly proved in accordance with the Evidence Act. But I am afraid that such contention cannot be accepted as the owner of the vehicle has been specifically confronted with this statement and is fully aware of the same. The owner of the vehicle has prima facie committed perjury for which separate proceedings ought to be initiated against him.

19. However, before doing so, I feel it proper that notices be issued to the owner of the vehicle - Ram Krishan and also the driver Roshan Lal, to Show Cause why the proceedings for perjury be not initiated against them. The Registry is directed to register two separate cases and issue notices alongwith copy of this judgment to the aforesaid persons, returnable on 27.6.2017.

20. In view of the above, the award passed by the learned Tribunal cannot be sustained and is accordingly set aside, as it is respondent No. 2, who introduce false defence in the instant case. It is he alone who is liable to satisfy the award and the insurance company is exonerated of its liability. The appeal is accordingly allowed, leaving the parties to bear their own costs.