
(2014) 08 SHI CK 0043
In the High Court Of Himachal Pradesh
Case No : FAO No. 322 of 2011-C

IFFCO TOKIO Gen. Insurance Company Limited	APPELLANT
Vs	
Joginder Kaur	RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 10(3), 14, 149(2), 149(2)(a)(ii), 15

Citation : (2014) 3 ShimLC 1548

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Virender Sharma, Advocate for the Appellant; Naveen K. Bhardwaj and Bimal Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—By the medium of this appeal, the appellant-Insurance Company has questioned the award dated 30th April, 2011, passed by the Motor Accidents Claims Tribunal (II), Fast Track, Kullu, H.P. (hereinafter referred to as "the Tribunal") in MAC No. 10 of 2010, titled as Smt. Joginder Kaur & others versus Sh. Hem Raj and another, whereby compensation to the tune of Rs. 5,25,000/- with interest @ 6% per annum from the date of the claim petition till its realization, came to be awarded in favour of the claimants-respondent 1 to 4 herein, and the appellant-insurer was saddled with liability (for short, the "impugned award"), on the grounds taken in the memo of appeal.

Brief Facts:

2. The claimants, being victims of a motor vehicular accident, invoked jurisdiction of the Tribunal, in terms of the mandate of Section 166 of the Motor Vehicles Act, for short "the Act", for grant of compensation to the tune of Rs. 30,00,000/-, as per the breaks-up given in the claim petition, on the ground that driver-cum-owner, namely, Hem Raj had driven the offending vehicle-Spark Car bearing registration No. HP-01K-2090, rashly and negligently, on 3rd November, 2009, at

about 8.30 a.m., at Circuit House Road, Manali, District Kullu, hit one Sucha Singh, who sustained injuries and succumbed to the injuries. The claimants have also pleaded in their claim petition that the deceased was earning Rs. 8,984/- per month and was 49 years" of age at the time of accident.

3. The claim petition was resisted and contested by the appellant-insurer and respondent No. 5-owner-cum-driver-insured, on the grounds taken in the memo of objections.

4. Following issues were framed by the Tribunal on 05.08.2010:

"1. Whether Sucha Singh had died on 3.11.09 in motor accident involving the vehicle bearing registration No. HP-01K-2090?OPP

2. Whether the accident had taken place due to the rashness or negligence of respondent No. 1?OPP

3. Whether the petitioners are entitled for compensation to the extent of Rs. 30 lakh?OPP

4. Whether the vehicle was being plied in contravention of M.V. Act as well as the terms and conditions of Insurance Policy? ...OPR

5. Whether petition has been filed in collusion with respondent no. 1. If so, its effect? ...OPR

6. Whether petitioners have not come to the Court with clean hands and have suppressed the material facts from the Court. If so, its effect?OPR

7. Relief."

5. Claimants examined Dr. Shashi Wappa (PW-1), ASI Daya Ram (PW-2), Shri Vinod Kumar (PW-3) and Shri Makhan Singh (PW-4). Smt. Joginder Kaur (PW-5), one of the claimants, also appeared in the witness box. The owner-cum-driver Hem Raj examined Duni Chand (RW-1) and also appeared himself in the witness box as RW-2. After recording the aforesaid evidence, Insurance Company-insurer was asked to lead evidence, but it failed to do so. The evidence on behalf of the insurer-Insurance Company was closed by the Tribunal vide order dated 31.03.2011.

6. The Tribunal after scanning the entire evidence passed the impugned award and the claimants were held entitled to compensation to the tune of Rs. 5,25,000/- with interest @ 6% per annum from the date of the claim petition till realization of the award amount. The insurer-appellant was saddled with liability.

7. The claimants and the insured-owner-cum-driver have not questioned the impugned award on any count. Thus, it has attained finality so far as it relates to them.

8. Thus, the only question, which arises for determination in this appeal is-whether the insurer was rightly saddled with liability?

9. The learned Counsel for the appellant-insurance company argued that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident and the owner has committed breach of the terms and conditions of the Insurance Policy.

10. Learned Counsel for respondent No. 5 argued that in terms of the Insurance Policy, the insurer has to satisfy the award.

11. The argument of the learned Counsel for the appellant is not tenable for the following reasons.

12. I have gone through the impugned award, pleadings and the evidence on the record. I am of the considered view that driver-cum-owner Hem Raj had driven the offending vehicle rashly and negligently on the fateful day and caused the accident, in which deceased, namely Sucha Singh sustained injuries and succumbed to the injuries. Thus, the findings returned by the Tribunal on issues No. 1 & 2 are upheld.

13. The adequacy of the compensation is not in dispute. Accordingly, the findings returned by the Tribunal on issue No. 3 are upheld.

14. The onus to prove issues No. 4, 5 & 6 was upon the insurer-Insurance Company, but it failed to discharge the same because it has not led any evidence.

15. It is a beaten law of land that the insurer has to plead and prove that the owner of the offending vehicle has committed willful breach of the terms contained in insurance policy and mere plea here and there cannot be a ground for seeking exoneration.

16. My this view is fortified by the Apex Court judgment in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, has laid down some guidelines. It is apt to reproduce the relevant portion of para 105 of the judgment, supra, herein::

105.....

(i).....

(ii).....

(iii)

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver

or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured u/s 149(2) of the Act."

17. It is also profitable to reproduce para 10 of the judgment rendered by the Apex Court in Pepsu Road Transport Corporation Vs. National Insurance Company, , hereinbelow:

"10. In a claim for compensation, it is certainly open to the insurer u/s 149(2)(a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

18. It is apt to mention herein that the Insurance Policy contains a clause, which reads as under:

"Person or Classes of persons entitled to drive:-

Any person including Insured provided that the person driving holds an effective driving licence at the time of the accident and is not (sic) from holding or obtaining such a licence.

Provided also that the person holding an effective learner's licence may also drive the vehicle when not used for the transport of passenger at the time of accident (in case of Stage Carriage/Contract Carriage/Private Service vehicle) OR

when not used for transport of goods at the time of accident (in case of Goods Carriage) and such a person satisfies the requirement of Rule 3 of the Central Motor Vehicle Rules, 1989."

19. It is also profitable to reproduce paras 88 & 89 of Swaran Singh's case, *supra*, herein::

"88. Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provision of Section 149(2) of the said Act.

89. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Sections 3(2) and 6 of the Act provide for the restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main enactment. It is also well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.

20. In terms of the aforesaid clause, no breach has been committed by driver-cum-owner Hem Raj, who was holding a learner's licence at the time of accident, which was valid and effective and the insurer has to satisfy the liability of the third party.

21. In view of the above discussion, the only conclusion which can be drawn is that the insurer-appellant has failed to discharge the onus and prove that the offending vehicle was being plied in breach of the terms and conditions contained in the insurance policy or that the driver of the offending vehicle was not having a valid and effective licence to drive the vehicle in question. Accordingly, the findings returned by the Tribunal on issues No. 4, 5 & 6 are upheld.

22. Having said so, the appeal merits dismissal. The same is accordingly dismissed and the impugned award is upheld.

23. The Registry is directed to release the awarded amount in favour of the claimants, strictly in terms of the conditions contained in the impugned award, through payees account cheque.

24. Send down the records after placing copy of the judgment on record.