

(2004) 03 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No's. 215 and 593 of 2003 and Cross-objection No. 437 of 2003

Kala

APPELLANT

Vs

Amrit Kumar and Others

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 147(2), 149(2), 166(1)

Citation : (2005) ACJ 427

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Sanjeev Kuthiala, for the Appellant; K.D. Sood, B.K. Sood, Alok Ranjan, Devyani Sharma and Richa Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The above noted two appeals and cross-objections arising out of award dated 14.3.2003 of learned Motor Accidents Claims Tribunal (II), Solan (for short, "the Tribunal"), are being disposed of together by this single judgment.

2. A mule of respondent Amrit Kumar, hereinafter referred to as the claimant, was killed and his cart was damaged in a motor accident which took place on 27.4.2000 at about 11 a.m. near Satsang Bhawan on Nalagarh-Kalka Road.

3. Appellant Kala in F.A.O. No. 215 of 2003 and respondent No. 2 in F.A.O. No. 593 of 2003 is the owner of the truck bearing No. HP 09-0567 which was involved in the accident while respondent No. 3 in both the appeals, that is, Rifiq Mohammad was the driver of the said truck. Appellant in F.A.O. No. 593 of 2003 insurance company is the insurer of the truck.

4. The claimant approached the learned Tribunal by way of a petition u/s 166, Motor Vehicles Act, 1988 (for short, "the Act") seeking compensation to the tune of Rs. 55,000, that is, Rs. 40,000 for the dead mule and Rs. 15,000 for the

damage caused to the cart.

5. In seeking compensation the claimant had initially pleaded that the offending truck at the relevant time was being driven by the owner thereof and that the accident was as a result of rash and negligent driving on the part of the owner of the truck. Kala, the owner of the truck on putting in appearance before the learned Tribunal filed his reply and pleaded that the truck at the relevant time was being driven by respondent No. 3 Rifiq Mohammad. In view of such reply filed by the owner of the truck, the claimant amended his claim petition and by impleading the said Rifiq Mohammad as respondent No. 3 averred that the accident was as a result of the rash and negligent driving on his part.

6. The owner and driver respectively of the offending truck denied the accident as claimed by the claimant. It was pleaded that the mule got frightened on seeing a dead cow near the place of accident as a result the mule started running and it came to struck against the moving truck. Rash and negligent driving on the part of the driver was denied.

7. The insurer while resisting the claim petition denied its liability on the ground that the driver of the truck did not possess a valid driving licence. It did not specifically plead whether the owner or the driver was driving the truck. In fact no reply was filed by it to the amended petition. Even in the reply filed to the original claim petition, the averments made in para 24 of the claim petition were not denied inasmuch as no reply thereto was filed. Alternative case of the insurer was that its liability under the insurance policy was limited to Rs. 6,000.

8. On the basis of the evidence coming on record the learned Tribunal came to the conclusion that the offending truck was being driven at the relevant time by the owner himself and that the accident was due to rash and negligent driving on the part of the owner, who was not holding a valid driving licence.

9. The claimant was held entitled to compensation of Rs. 30,000 on account of death of his mule and damage to his cart. The insurer was held liable to indemnify the owner-insured and was called upon to pay the amount of compensation along with interest. Liberty was, however, reserved to the insurer to recover the amount from the owner-insured subsequently.

10. Feeling aggrieved, the owner of the truck has come up before this court by way of an appeal, being F.A.O. No. 215 of 2003 assailing the quantum of compensation awarded as well as the findings of the learned Tribunal that it was he who was driving the offending truck at the relevant time and that he did not possess a valid driving licence.

11. The claimant, who was also dissatisfied with quantum of compensation awarded, has preferred Cross-objections, being cross objection No. 437 of 2003 in the appeal preferred by the owner.

12. The insurer of the truck has also preferred an appeal against the award of the learned Tribunal assailing the quantum of compensation awarded and the

findings holding it to be liable to indemnify the insured. It was contended that it was not liable since there has been contravention of the terms of insurance policy inasmuch as the owner, who was himself driving the vehicle was not holding a valid driving licence. Alternatively, it was contended that its liability was limited to the extent of Rs. 6,000 only.

13. It may be stated that the insurer was permitted u/s 170 of the Act by learned Tribunal to raise all the defences and to contest the claim petition on all the grounds.

14. An objection as to the maintainability of the claim petition, at the very outset, was raised by the appellant insurer of the offending truck. Relying upon the definition of "property" as given in Section 145 of the Act, it has been contended by the learned counsel for the insurer that a mule (an animal) is not "property" within the meaning of the Act, therefore, a petition seeking compensation for the death of an animal was not maintainable.

15. There is no denying that a petition for compensation in respect of damage/loss caused to the property is maintainable before the Tribunal u/s 166 (1) (b) of the Act. Therefore, the question to be seen is whether an animal is "property" within the meaning of Section 145 (e) of the Act. Section 145 (e) defines the word "property" as under:

" "property" includes goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and milestones."

16. The learned counsel for the claimant, on the other hand, has contended that though Section 145 (e), on the face of it, does not appear to cover animal as property, there is no reason why animal should not be regarded as property. Laying stress and emphasis on the word "includes" appearing in the section, it has been submitted that the use of the word "includes" widens the scope of the definition.

17. According to Black's Law Dictionary, the word "property" is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest and includes real and personal property, easements, franchises and incorporeal hereditaments and includes every invasion of one's property by actionable wrong.

18. Insofar as classification of property is concerned, it may either be real or immovable, or personal or movable property. Personal property in broad and general sense means everything that is the subject of ownership, not coming under denomination of real estate. A right or interest in things personal, or right or interest less than a freehold in reality, or any right or interest which one has in things movable. Therefore, generally, all property other than real estate such as goods, chattels, money, notes, bonds, stocks and causes in action generally,

including intangible property. Personal property is divisible into (1) corporeal personal property, which includes movable and tangible things such as animals, furniture, merchandise, etc. and (2) incorporeal personal property which consists of such rights as personal amenities, stocks, shares, patents and copy rights.

19. Considering the inclusive nature of the definition of the word "property" (quoted above) a wider meaning has to be given to the term, that is, property as is understood generally and including goods carried in the motor vehicle, roads, bridges, culverts, causeways, trees, posts and milestones. Giving such general meaning, an animal (a mule in the present case) would fall within the definition of "property" and as such a petition for compensation in respect of the death of an animal would be maintainable under the Act.

20. It is well settled that the word "includes" or "including" used within the statute is interpreted as a word of enlargement or of illustrative application.

21. In *Smti Helen Ghosh Vs. Shri Babul Roy and Others*, one heifer (a young cow) while grazing on the kacha portion of the road was killed in a motor vehicle accident. The owner of the heifer lodged a claim petition under the Act seeking compensation for the death of his heifer. A question arose whether heifer was property within the meaning of Section 93 (bb) of the Motor Vehicles Act, 1939 [corresponding to Section 145 (e) of the Act] and the petition for compensation was maintainable under the Act. Answering the question in the affirmative, it was held by Gauhati High Court that heifer was property within the meaning of Section 93 (bb) of the Motor Vehicles Act, 1939 and the petition made under the Act for compensation for the death of heifer was maintainable.

22. I am in full agreement with the ratio laid down by the Gauhati High Court and following the same, it is held that the mule, which was killed in the motor vehicle accident, is a property within the meaning of Section 145 (e) of the Act and the claim petition seeking compensation for the death thereof is maintainable under the Act.

23. The next question which arises for determination in the present case is as to who was driving the offending truck at the relevant time. The learned Tribunal has held that the owner-insured himself was driving the offending truck and that he was not holding a valid driving licence.

24. It may be stated that as per the case of the claimant and the insured, the truck at the relevant time was being driven by the driver Rifiq Mohammad who was impleaded as respondent No. 3 before the learned Tribunal. This Rifiq Mohammad also has not disputed the fact that he was driving the offending vehicle at the relevant time. His only defence is that there was no rash and negligent driving on his part and that it was the mule who got frightened on seeing a dead cow and started running and struck against the moving truck.

25. As stated above, the insurer has nowhere pleaded as to who was driving the truck at the relevant time. From the conduct of the insurer, it appears that it has

not disputed that the offending truck was being driven at the relevant time by the driver Rifiq Mohammad.

26. As stated above, initially the claimant had filed the claim petition by averring that the offending truck was being driven by the owner-insured himself. However, in view of the reply filed by the owner-insured that the truck was being driven by Rifiq Mohammad, an application was made by the claimant under Order 1, Rule 10, CPC for impleading the said driver Rifiq Mohammad as a party respondent. It was pleaded in the application that since the said Rifiq Mohammad was driving the offending truck at the relevant time, he was a necessary party to the proceedings. No reply to this application was filed by the insurer. Nor any objection to the impleadment of the said Rifiq Mohammad as a party was raised. Such application was allowed by the learned Tribunal on 12.3.2001 on the basis of the statement made by the learned counsel for the insurer to the effect that there was no objection to the application being allowed.

27. Again in pursuance of the impleadment of Rifiq Mohammad as a party respondent an application came to be made by the claimant for amendment of the claim petition under Order 6, Rule 17, Civil Procedure Code, to aver and plead that the offending truck at the relevant time was being driven by Rifiq Mohammad. No reply to this application was filed by the insurer nor any objection was raised. This application was also allowed by learned Tribunal on the basis of concession made by the learned counsel for the insurer on 15.10.2001.

28. It is also significant to note that no reply was filed by the insurer to the amended claim petition wherein it was specifically averred and pleaded that the offending truck was being driven by Rifiq Mohammad at the relevant time. In the absence of specific denial by the respondent, it will have to be presumed that the insurer admitted that the offending truck was being driven by the said Rifiq Mohammad.

29. In view of such admitted facts, the learned Tribunal has erred in holding that the offending truck, at the relevant time, was being driven by the owner-insured himself. Such findings, therefore, cannot be sustained and are accordingly set aside. It is held that the truck at the relevant time was being driven by Rifiq Mohammad.

30. It is in evidence that the driver Rifiq Mohammad was holding a valid driving licence, copy of which is Exh. R-2.

31. Even if it be assumed that the truck was being driven by the owner/insured, the learned Tribunal has erred in holding that he was not holding a valid driving licence.

32. It is by now well established that the onus to prove that the person driving the vehicle was not holding a valid driving licence, is on the insurer. No evidence has been led by the insurer to show that the owner-insured was not holding a valid driving licence. The learned Tribunal has proceeded to hold that the owner-

insured, who was driving the truck was not holding a valid driving licence simply on the ground that he had not produced his driving licence.

33. It may be noticed that an application was made by the insurer before the learned Tribunal under Order 11, Rule 12, Civil Procedure Code, read with Section 158 (6) of the Act for direction to the insured to produce the documents of the vehicle including the driving licence of the driver. This application subsequently was not pressed on behalf of the insurer on the ground that it had received all the relevant documents detailed in the application. The statement was made by the counsel for the insurer in this regard on 12.6.2001, that is, before the amendment of the claim petition. The only inference is that the driving licence or copy thereof in respect of the owner-insured was supplied to the insurer and it was for the insurer to show that the driving licence was not valid.

34. The findings of the learned Tribunal that the driver of the offending vehicle was not holding a valid driving licence are thus bad and the same are accordingly set aside.

35. Since the driver of the offending truck has been found to be holding a valid driving licence, the insurer cannot avoid its liability under the insurance policy.

36. Coming to the question of quantum of compensation, the learned Tribunal has awarded total compensation of Rs. 30,000 that is, Rs. 25,000 towards the mule and Rs. 5,000 towards the damage to the cart. The compensation awarded cannot be said to be either inadequate or excessive.

37. It is in evidence of claimant himself that he had purchased the she-mule along with a foal for a sum of Rs. 40,000 about four years before the accident. Since the price paid included the price of the foal as well and in view of the fact that the mule had advanced in age by about four years, the compensation of Rs. 25,000 awarded for the dead mule, on the face of it, appears to be just and reasonable especially in the absence of any evidence to the contrary.

38. Similarly, the evidence of the claimant that the cart was purchased by him for Rs. 15,000 from PW 3 has remained unrebutted. There is no evidence by the claimant that the cart was damaged beyond repairs. Under the circumstances the claimant would be entitled to compensation to the extent of the amount required for the repair of the cart for bringing it back to the position it was before the accident. Therefore, on the facts and circumstances of the case compensation of Rs. 5,000 awarded towards damage of the cart is just and reasonable.

39. It was lastly contended on behalf of the insurer that its liability was limited to the extent of Rs. 6,000 in respect of loss to the property of a third party. The contention raised is simply to be rejected. A bare perusal of the insurance policy Exh. R-1 shows that the liability of the insurer towards damage to third party property is unlimited. In fact a sum of Rs. 75 as additional premium is shown to have been paid by the insured to cover unlimited liability of the insured for

damage to third party property. Therefore, the liability of the insurer under the insurance policy Exh. R-1 has been rightly found to be unlimited.

40. For the foregoing reasons appeal preferred by the insurer, being F.A.O. No. 593 of 2003 is dismissed, while the appeal preferred by the owner-insured is partly allowed to the extent indicated above. The cross-objections preferred by the claimants are dismissed.

The parties are left to bear their own costs.