

(2009) 12 SHI CK 0009
In the High Court Of Himachal Pradesh

Mohan Lal and National Insurance Company Ltd.	APPELLANT
Vs	
Smt. Veena Devi and Others	RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2009) 12 SHI CK 0009

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—Both these appeals are being taken together and disposed of by the same judgment they arise out of the same accident. FAO. No. 118 of 2006 has been preferred by the appellant-Mohan Lal who is the owner of the accidented vehicle.

2. In brief the facts of the case are that the deceased Sh. Rajesh Kumar was travelling in truck No. HP-31-1735 which was owned by the appellant herein. On 18.11.2000, this truck was carrying a marriage party and some goods from village Pingla to village Baggi. The deceased was also a passenger. The truck met with an accident resulting in the death of Rajesh Kumar. The widow, minor children and mother claimed damages on the allegation that he was earning income from Karyana shop in addition to agriculture income. On the settled issues, the learned Tribunal held that the accident had occurred due to the negligence on the part of the driver of the vehicle and held respondent No. 1-appellant herein liable for the amount awarded. The learned tribunal holds that the deceased was travelling in the truck as a gratuitous passenger and that this was against the terms of the insurance policy. The liability was, therefore, fastened on the appellant herein. A sum of Rs. 6,04,000/- along with interest was awarded to the claimants which amount was directed to be deposited by the Insurance Company leaving it open to recover it from the appellant/owner.

3. Learned Counsel appearing for the appellant urges that there is ample evidence on record to show that the appellant was not plying the truck in

contravention of any condition in the insurance policy but it was carrying goods and the deceased could not be treated as gratuitous passenger but as the owner of the goods.

4. This argument requires to be rejected, as on the evidence on record, it is conclusively established that the truck was transporting the marriage party and was being driven against the terms of the insurance policy. The second point urged is that the income of the appellant has been assessed on the higher side and, therefore, cannot be accepted. Learned Counsel submits that no evidence has been brought on record to show that the appellant was, in fact, carrying on business of a Karyana merchant and had any agricultural income. This submission also cannot be accepted for the reason that the wife of the deceased stated in clear terms that he was a diploma holder and was carrying on business as also agriculture pursuits. Sh. Raj Kumar (PW2) corroborates this statement. There is no merit in this appeal which is accordingly dismissed. There shall be no order as to costs.

5. FAO (MVA). No. 150 of 2007 has been instituted by the National Insurance Company urging that the liability could not be imposed upon the Insurance Company which could be directed to pay the awarded amount, more especially, when it was established on the record of the case that there has been a clear breach of the insurance policy. Learned Counsel placed reliance on a judgment of the Supreme Court in National Insurance Co. Ltd. Vs. Kaushalaya Devi and Others, wherein the court ruled that the owner is liable to pay the compensation in case of breach and the Insurance Company cannot be made to satisfy the award in the first place. The relevant portion reads as under:

15 For the reasons aforementioned, civil appeal arising out of SLP (C) No. 10694 is allowed and civil appeal arising out of SLP (C) No. 9910 of 2006 is dismissed. If the amount deposited by the Insurance Company has since been withdrawn by the first respondent, it would be open to the Insurance Company to recover the same in the manner specified by the High Court. But if the same has not been withdrawn the deposited amount may be refunded to the Insurance Company and the proceedings for realization of the amount may be initiated against the owner of the vehicle. In the facts and circumstances of the case, however, there shall be no order as to costs.

6. Learned Counsel appearing for the claimants submits that the Insurance Company would be free to recover this amount in execution from the owner. He placed reliance on the decision of the apex Court in National Insurance Co. Ltd. Vs. Parvathneni and Another, in which it has been held as under:

4 No doubt, there are some decision which have taken the view that even if the insurance company has no liability, yet it must pay and later on recover it from the owner of the vehicle. (See for example Union of India (UOI) and Others Vs. S. Krishnan and Another, Samundra Devi v. Narendra Kaur (2008) 9 SCC 100 : (2008) 3 SCC 690 (vide SCC p. 104, para 16), Oriental Insurance Co. Ltd. Vs.

Brij Mohan and Others, and The New Indian Insurance Company Vs. Darshana Devi and Others, etc. We have some reservations about the correctness of the aforesaid decisions of this Court.

7. Hence, we direct that the papers of this case be placed before the Hon"ble the Chief Justice of India for constituting a larger Bench to decide the following questions:

(1) If an insurance company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle?.

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?

7. The law that the Insurance Company can be asked to satisfy the award has as yet not been changed. Judgments of the Supreme Court on this point still hold the field.

8. In these circumstances, it cannot be held that no direction can be given to the Insurance Company to satisfy the award in the first instance before recovering it from the owner. The submission made by the learned Counsel appearing for the Insurance Company is, therefore, not tenable.

9. This appeal is, therefore, disposed of with the direction that the Insurance Company shall be free to recover the amount from the owner of the vehicle by instituting execution proceedings before the Motor Accident Claims Tribunal. There shall be no order as to costs.