

(2010) 10 SHI CK 0304
In the High Court Of Himachal Pradesh
Case No : FAO No. 167 of 2006

National Insurance Company

APPELLANT

Vs

Satya Devi and Others

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 10 SHI CK 0304

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—This appeal, by the Insurance Company, is directed against the award dated 28th February, 2006 of Motor Accident Claims Tribunal, by which, after holding that one Gian Chand had died in an accident of Tractor, belonging to respondent Ramesh Chand, and determining the quantum of compensation payable for his death, appellant has been ordered to pay compensation money.

2. Deceased Gian Chand was employed with a Contractor, by the name of Akshay Kumar. It appears that Akshay Kumar's services were hired by Irrigation and Public Health Department of Himachal Pradesh, for repairing a tube-well. Said Akshay Kumar deputed deceased Gian Chand to carry a compressor, for cleaning tube-well, to the site of the tube-well. Gian Chand hired Tractor of respondent Ramesh Chand, for pulling the compressor to the site of the tube-well. Tractor started with the compressor. Gian Chand boarded the Tractor. On the way, the Tractor rolled down the road and Gian Chand fell down the road alongwith the Tractor and died.

3. Dependents of Gian Chand, i.e. respondent Satya Devi and others, filed a claim petition, u/s 166 of the Motor Vehicles Act. Owner of the vehicle, i.e. respondent Ramesh Chand, denied that deceased was on board the Tractor, though he did admit that his Tractor had been engaged for pulling the compressor to the site of tube-well of Irrigation and Public Health Department. He pleaded that Tractor had been engaged by Akshay Kumar himself and not by

the deceased. He stated that Gian Chand was going along the road, at the site of the accident, when he was hit by a bus and that the said bus, after hitting Gian Chand, rammed into the Tractor, as a result of which Tractor rolled down the road.

4. Insurance Company denied its liability to pay the compensation, on the plea that deceased was on board the Tractor, unauthorisedly, and contrary to the terms and conditions of the Policy as also the provisions of Motor Vehicles Act.

5. After enquiry, learned Tribunal held that the deceased was on board the Tractor and he died in the accident of the Tractor. Cause of accident was held to be rash or negligent driving of the Tractor by respondent Ramesh Chand. A sum of Rs. 92,500/- was assessed as compensation and the present appellant was ordered to pay the same. Appellant's plea that a person, travelling by Tractor, was not covered under the Policy or that the deceased was an unauthorized passenger, was not accepted.

6. I have heard learned Counsel for the parties and gone through the record.

7. Learned Tribunal has given the finding that the deceased was on board the Tractor. Learned Counsel representing the insured, i.e. respondent Ramesh Chand, has argued that as per testimony of Surjit Kumar (PW-4), who claimed to have been travelling alongwith the deceased, they were in a trolley attached to the Tractor. Statement of PW-4 Surjit Kumar does not inspire confidence. The earliest version, which was given to the police, vide FIR Ex. PW-2/A, very clearly records that the deceased and one more person (probably PW-4 Surjit Kumar) were on board the Tractor, to which a compressor was attached, at the time of the accident. There is no reference to the trolley in the FIR. Similarly, in the claim petition also, there is no reference that the deceased was on board a trolley. Owner of the vehicle, i.e. respondent Ramesh Chand, also did not say that any trolley was attached to the Tractor. In any case, when a compressor was attached to the Tractor, question of trolley being attached to it could not have arisen.

8. Seating capacity of the Tractor, as per Registration Certificate of the Tractor, was only one, including the driver. Registration Certificate is Ex. RX. Now, when the seating capacity of the Tractor was only one, there could not have been any agreement between the appellant (insurer) and respondent Ramesh Chand (insured) for covering risk of any passenger on the Tractor. The very fact that the deceased was on board the Tractor, in violation of the conditions of the Registration Certificate, is enough to hold that he was an unauthorized passenger.

9. Now, when the seating capacity of the Tractor was only one, it can legitimately be presumed that the present appellant could not have insured the risk of the persons other than the driver of the Tractor, because that would have been contrary to the provisions of the Motor Vehicles Act, which makes it an offence to carry more passengers than mentioned in the Registration Certificate.

10. In view of the abovestated position, I am of the considered view that risk of

the deceased was not covered by the Policy and, therefore, appellant could not have been made liable to pay the compensation money. Hence, the appeal is accepted. Impugned award is modified to the extent that liability to pay the compensation money, together with interest, as assessed by the Motor Accidents Claims Tribunal, shall be that of the owner of the Tractor, i.e. respondent Ramesh Chand and not that of the appellant-Insurance Company.

Appeal stands disposed of, accordingly.