

(2008) 09 SHI CK 0001
In the High Court Of Himachal Pradesh

National Insurance Company Limited	APPELLANT
Vs	
Lata Devi and Others National Insurance Company Limited Vs Tupli Devi and Others	RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2010) ACJ 1709 : (2009) 121 FLR 111 : (2009) 1 ShimLC 16

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.

FAO (WCA) No. 335/2003:

1. This FAO has been filed against the award dated 8.10.2002 passed by the Commissioner, under Workmen's Compensation Act (SDM), Sundernagar, District Mandi in case No. 14.

2. The brief facts necessary for the adjudication of this appeal are that respondents No. 1 to 3 filed a claim petition before the Commissioner on 30th December, 1999 after the death of Sh. Chaman Lal son of Sh. Dundi Ram, resident of village Beena, Post Office Kalahod, Tehsil Sundernagar. The case set out in the petition is that Sh. Chaman Lal deceased was working as a driver under respondents No. 4 to 6. The tractor met with an accident on 6.11.1999 resulting in the death of Chaman Lal on the spot. The date of birth of Chaman Lal was 4.6.1967 and according to the averments contained in the claim petition, he was being paid a sum of Rs. 2,000/- per month as wages by respondents No. 4 to 6. The claimants claimed that they were dependent upon the income of Chaman Lal. They claimed compensation of Rs. 4,00,000/- under the Workmen's Compensation Act, 1923. The tractor in question was ensured with the appellant-insurance company. Respondents No. 4 to 6 filed joint reply to the claim petition. It is admitted by respondents No. 4 to 6 that deceased Chaman Lal has died

during his employment with them. The appellant-insurance company has filed a separate reply. The sum and substance of the reply filed by the insurance company was that since deceased was insurer and one of the owners of the tractor No. HP-31-1387, the claim petition was not maintainable. It was specifically pleaded therein that there was collusion between the claimants and the private respondents. The factum of driver being employed by respondents No. 4 to 6 was also denied. The learned Commissioner framed the following issues:

1. Whether the deceased late Chaman Lal was working as tractor driver with the respondents No. 1 to 3? OPA
2. Whether the deceased died in the tractor accident on 6.11.1999 as alleged? OPA
3. Whether the petitioners are entitled for compensation on account of death in accident, if so, from whom and on what extent? OPA
4. Whether the petitioners have no enforceable cause of action against respondents No. 4 as alleged? OPR-4
5. Whether the petitioners have no locus standi to file the present petition as alleged? OPR-4
6. Whether the Insurance Company is not liable to indemnify the insured?

3. The Commissioner has recorded the following findings on the aforesaid issues:

Issue No. 1 Yes.

Issue No. 2 Yes.

Issue No. 3 Yes. Rs. 2,03,850/- (Rupees Two lacs three thousand eight hundred and fifty only) from respondent No. 4 along with interest @ 12% per annum as per operative part of this order.

Issue No. 4 No.

Issue No. 5 No.

Issue No. 6 No.

The learned Commissioner on the basis of the oral as well as documentary evidence led by the parties has awarded a sum of Rs. 2,03,850/- to respondents No. 1 to 3 vide award dated 8.10.2002. The claimants were also held entitled for interest on the remaining part of the award @ 12% per annum. The liability was fastened on the insurance company.

FAO (MVA) No. 511/2003:

4. This FAO has been directed against the award dated 18.7.2003 passed by the learned Motor Accident Claims Tribunal, Mandi in claim petition No. 55 of 2000.

5. The brief facts necessary for the adjudication of this appeal are that one Sh. Bhup Singh on 6.11.1999 was coming back to his home after attending his job of plumber. He was walking on the left side of the road, in the meantime tractor No. HP-31-1387 came in a high speed being driven by its driver Chaman Lal (deceased). The trolley was loaded with stones and it went out of the road and consequently Bhup Singh died. The age of the deceased was 24 years and as per the averments contained in the claim petition, he was earning Rs. 5,000/- per month. Respondents No. 2 to 4 filed a separate reply and denied the negligence on the part of the driver. The insurance company filed a separate reply. The sum and substance of the reply filed by the insurance company was that there was a breach of provisions of Section 149 of the Motor Vehicles Act, 1988 and according to it, the driver was not in possession of a valid driving licence. The learned Motor Accident Claims Tribunal on the basis of the evidence led by the parties awarded a sum of Rs. 3,17,200/- to the claimants with interest @ 9% per annum with costs and lawyer's fee was assessed at Rs. 1100/-.

6. Since common questions of law and facts are involved in these appeals, these were heard together and are being decided by a common judgment.

7. Mr. Ashwani Sharma learned Counsel appearing on behalf the appellant-insurance company has strenuously argued that the tractor bearing No. HP-31-1387 was never transferred by deceased Chaman Lal to his brothers. He then contended that the owner could not be treated as a workman. He also contended that the insurance policy was drawn in favour of Sh. Chaman Lal. He has asserted that the sale deed Ex.P-1/A is a sham transaction since according to him neither there is any consideration paid by his brothers nor the tractor was ever delivered to them. He further contended that the signatures of the brothers of deceased Chaman Lal are not in the sale deed Ex.P-1/A.

8. In FAO (MVA) No. 511/2003, Mr. Ashwani Sharma contended that since the policy was in the name of Chaman Lal, the legal heirs of Sh. Chaman Lal were required to be brought on record. His further submission was that since the policy was in the name of Sh. Chaman Lal, the insurance company is not liable to indemnify respondents No. 2 to 4.

9. Mr. Ajay Chandel and Mr. R.R. Rahi, Advocates have supported the order dated 8.10.2002 and award dated 18.7.2003.

10. I have heard the learned Counsel for the parties and have also perused the record carefully.

11. The FAO (WCA) No. 335/2003 was admitted on the following substantial question of law:

1. Whether a co-owner of the vehicle and insured himself can be a "workman" within the meaning of Workmen's Compensation Act and in the event of his death, the legal heirs are entitled to claim compensation under the policy of insurance?

2. Whether liability for payment of compensation, interest etc. to the claimants could legally be fixed upon the insurance-company in the facts and circumstances of the present case?

Since both the substantial questions of law are inter-connected, therefore, the same can be conveniently discussed together.

12. The short question involved in this appeal is: Whether the co-owner can claim himself to be a workman within the ambit of Section 2(n) of the Workmen's Compensation Act, 1923? Deceased Chaman Lal was driving the tractor No. HP-31-1387 on the fateful day. He died in the accident. The claim petition has been filed as discussed hereinabove by the claimants claiming compensation of Rs. 4,00,000/-. Mr. Ashwani Sharma has strenuously argued that Ex.P-1/A is a sham transaction. According to him Ex.P-1/A is dated 4.4.1999 and the accident has taken place on 6.11.1999. There is no mention of any consideration except that owner had stated that he has paid the installments falling in his share and he has received the share from the other co-owners. In Ex.P-1/A there are signatures of Chaman Lal and attesting witnesses. The names of other owners have not been mentioned in the sale deed. It is settled law by now that the sale is complete when the sale consideration is paid by the vendee and the vehicle is handed over. It is not necessary for the completion of a sale that there should be a transfer of the registration certificate. Ex.P-1/A was produced by AW-1 Smt. Lata Devi. She has stated that the tractor in question was being driven by her husband on 6.11.1999 for carrying stones for raising parapet of Man Singh. Sh. Man Singh is the brother of Sh. Chaman Lal. In her cross-examination, she has stated that the partition took place with other brothers, however, she could not produce any document to this effect. She could not spell out in her cross-examination how much money was paid by the co-owners to her husband. AW-3 Kishori Lai has scribed Ex.PA-1. He has deposed that Chaman Lai has received his share. The amount has not been mentioned by him. He has further deposed that he had sent the parties to Sh. Rajesh Tiwari, Notary Public to get the sale deed notarized. He has admitted in his cross-examination that Sh. Chaman Lal (deceased), Man Singh, Sant Ram and Smt. Devi were present on the spot, but their signatures were not obtained on Ex.P-1/A. He has further deposed that he had identified the signatures of Sh. Chaman Lai and he has signed as an identifier in the notary public register. This register has not been produced by Sh. R.K. Tiwari as per his own statement recorded by this Court. AW-5 is Om Prakash. He has also not stated a word about the amount, which Chaman Lai has received from other co-owners on 4.4.1999. He has also admitted in his cross-examination that the signatures of the other co-owners were not obtained in Ex.P-1/A. He has further deposed in his cross-examination that at the time of writing the sale deed, no transaction took place in his presence. Sh. Joginder Singh has appeared as RW-1. He has denied the suggestion in his cross-examination that Chaman Lai was not the owner of the tractor after 1.4.1999. RW-2 Sh. G.L. Nanda, Branch Manager has deposed that there was no relationship of employer and employee. In his cross-examination,

he has further deposed that he could not state whether Chaman Lal ceased to be the owner of the tractor after 1.4.1999 since according to him as per the bank record, he was the owner of the tractor. RW-2/Ais Sh. Man Singh. In his examination-in-chief, he has deposed that three of them have paid a sum of Rs. 39,000/- to Sh. Chaman Lai and thereafter he was engaged as a driver on salary of Rs. 2000/- per month. In his cross-examination, he has admitted that the insurance policy Ex.RW-1/A was in the name of Sh. Chaman Lal. He did not remember whether any receipt was obtained for the sale consideration from Sh. Chaman Lal. Sh. R.K. Tiwari has appeared as AW. He has deposed that the serial numbers are not mentioned in the document and he could not give the serial No. of Ex.P-1/A from the register. He could not produce the register in the Court and he has deposed that he has not registered any FIR since he has to reach the Court at 10.00 a.m.

13. It will also be pertinent to take note of the role of Mr. R.K. Tiwari, Advocate, who has attested Ex.P-1/A. This Court passed the following order on 18th May, 2006:

During the course of arguments one of the questions which has arisen is whether the so called sale deed Ex.PW-1/A was actually notarized by Mr. R.K. Tiwari, Advocate and Notary Public, Sundernagar or not. Mr. R.K. Tiwari, Advocate was examined as a witness by the claimants on 7.4.2001. Prior to this he was present in Court on 18.1.2001 when his statement could not be recorded since he had not brought his record. He was bound down to appear on the next date and was directed to bring the record with him. Despite these clear cut orders, Mr. R.K. Tiwari was not present on the said date i.e. 27.2.2001. Again on 14.3.2001 the said witness was not present and the summons issued to him were received back unserved with a request for an adjournment. On 7.4.2001 statement of Mr. R.K. Tiwari, Advocate was recorded, but he did not produce the register. When Mr. R.K. Tiwari, Advocate, appeared in the witness box he submitted that he could not trace out his record. He, however, stated that if he traces out the record, he will produce the same. Therefore, notice be issued to Mr. R.K. Tiwari, Advocate, to appear in this Court on 26th June, 2006 and to produce with him his register for the period 5.4.1999.

14. Thereafter this Court has passed the following order on 26.6.2006:

In this case notice has been issued to Mr. R.K. Tiwari, Advocate to appear in person in this Court today. Mr. T.S. Chauhan learned Advocate submits that he has been informed that Mr. R.K. Tiwari could not come today since his mother is unwell and is under treatment at PGI Chandigarh. Keeping in view the request made on behalf of Mr. R.K. Tiwari, list the matter on 13.7.2006, when Shri Tiwari will remain present.

15. Mr. R.K. Tiwari, Advocate was served for 26.6.2006, but he did not appear on that date as noticed by this Court in order dated 13.7.2006 and a request was made on his behalf on that day that his mother was unwell and, therefore, he

could not appear. The registry was directed to send a notice to Mr. R.K. Tiwari, Advocate to appear in person on the next date i.e. on 4th August, 2006. Order dated 13.7.2006 reads thus:

Mr. R.K. Tiwari, Advocate, was served for 26th June, 2006 but he did not appear on that date and a request was made on his behalf on that day that his mother is unwell and, therefore, he could not appear.

Today, again it is submitted on behalf of the respondents that Sh. R.K. Tiwari, Advocate, could not appear in the Court today as his mother, who was unwell, has recently expired. It is, therefore, requested that the matter be adjourned. Keeping in view the nature of the request, the same is allowed. List the matter on 4th August, 2006.

The Registry is directed to send a notice to Mr, R.K. Tiwari, Advocate, to appear in person on the date fixed, and to produce the relevant record in terms of the Order dated 18th May, 2006.

16. The statement of Mr. R.K. Tiwari was recorded on oath by this Court on 4th August, 2006. His statement dated 4th August, 2006 in verbatim reads thus:

I have not brought the summoned record especially the Register regarding attestation of documents for the period 1999. In fact, the record is not available with me since the same was lost or misplaced during the shifting of my office which took place in the year 2000. I have not lodged any report with the Police that the said Register has been misplaced or lost. By shifting of the office I mean that I shifted my office from the ground floor to the top floor of the same building after constructing the additional floors. It is correct on 7th April, 2001, I first came to know that the record is not available, when my statement was recorded in Court I was specifically asked why I had not lodged a complaint in this regard with the police. Till date I have not lodged any complaint with the police.

I issue receipts for the fees received by me as a Notary Public. Since 1995, when I was appointed Notary Public, I have been maintaining the receipt book. The receipt book has been maintained with counter foils. The counter foils remain with me. I cannot produce the counter foils of the receipt book with regard to the sale agreement notarized by me on 5th April, 1999. I shall have to look for the same. I may be given some time to look for the receipt book.

17. The statement of Mr. R.K. Tiwari was again recorded on 11th December, 2006, which reads thus:

I cannot produce any record. I have lost the Register bearing Sr. Nos. 107 to 608 for the year 1999. I also do not have receipt book relating to the entries made in the Register and cannot produce the same. I have now lodged an FIR on 10th September, 2006 regarding the loss of my Register and receipt book.

18. His statement was recorded separately in continuation of his earlier

statement dated 4th August, 2006. He has stated that he could not produce the register for the relevant period. The statements recorded by this Court, as noticed hereinabove, gives credence to the submission of Mr. Ashwani Sharma that Ex.P-1 is a sham transaction only to hoodwink the appellant-insurance company. The Court dis-approves the manner in which Mr. R.K. Tiwari has attested Ex.P-1/A. He has failed to produce the record, as noticed by this Court. Every document attested by a lawyer must be done with a lot of responsibilities. The documents cannot be attested without maintaining proper record.

19. It is thus evident from the statements of the witnesses discussed hereinabove that the document in question is a sham transaction. There is no mention of consideration amount in the sale deed. No receipt has been produced by any of the parties to substantiate that a sum of Rs. 39,000/- was ever paid to Sh. Chaman Lal. There is only oral submission by Sh. Man Singh. The manner in which the document has been executed casts serious doubt about its authenticity. Mr. R.K. Tiwari, Notary Public has not mentioned any serial number nor he could produce the register in the Court at the time when his statement was recorded. AW-3 has admitted that at the time of execution of document Man Singh, Sant Ram and Savitri Devi were present, however, their signatures were not obtained. AW-5 has also deposed in his cross-examination that all the four co-owners were present at the time of the execution of the document. RW-1, as discussed hereinabove, has deposed that Chaman Lal was the owner of the tractor even after 4.4.1999. RW-2 has deposed that there was no relationship of employer and employee between the parties and according to him as per the bank record, Chaman Lal was the owner of the tractor.

20. Cumulatively it is held that the tractor was never sold on the basis of Ex.P-1/A. Ex.P-1/A is a sham transaction and the Court will not give any credence to the same. This document has only been prepared to get the compensation from the appellant-company. This practice is deprecated by this Court.

21. The matter can also be viewed from another angle. Since this Court has held that the tractor in question was never sold, Sh. Chaman Lal always remained the owner of the tractor in question. There was no question of his being employed by respondents No. 4 to 6. There is no evidence also the manner in which Chaman Lal deceased was engaged as a driver by respondents No. 4 to 6. There is only self serving submission that Chaman Lal was engaged as a driver by respondents No. 4 to 6 on a salary of Rs. 2000/- per month. It is highly improbable that the brother and mother will engage their own brother as a driver. The findings recorded by the learned Commissioner that Chaman Lal was the workman and was engaged by his brothers and mother are contrary to the law. The owner could not be treated as a workman. There is no evidence on record the manner in which Chaman Lal might have been engaged as a driver by his brothers and mother.

22. The submission of Mr. Ashwani Sharma in FAO (MVA) No. 511/2003 is that since the tractor bearing No. HP-31-1387 was never transferred in the name of

respondents No. 1 to 3 and the insurance was only in the name of deceased Chaman Lal, the insurance company cannot be held liable to indemnify the respondents No. 1 to 3. The findings have been recorded by this Court in FAO (WCA) No. 335/2003 that the sale deed Ex.P-1/A was a sham transaction and the tractor in question was never sold by deceased Chaman Lai to respondents No. 1 to 3. The learned Motor Accident Claims Tribunal has also recorded categorical findings that there was no valid transfer of the insurance policy. The policy always stood in the name of Chaman Lal. If the policy has always remained in the name of Sh. Chaman Lal, it was necessary for the claimants to implead the legal heirs of deceased Chaman Lal in the claim petition. As far as the insurance company is concerned there was no privity of contract with respondents No. 1 to 3.

23. Accordingly, the FAO (WCA) No. 335/2003 is allowed. The order dated 8.10.2002 is set aside.

24. Consequently, in view of the aforesaid reasoning, the FAO (MVA) No. 511/2003 is remanded back to the learned Motor Accident Claims Tribunal, Mandi to decide the matter afresh by permitting the claimants to implead the legal heirs of deceased Chaman Lal since the insurance policy was in his name. There shall be no order as to costs.