(2015) 07 SHI CK 0110

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 36 of 2008

National Insurance Company Limited — APPELLANT

Vs

Ram Chander and Others — RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Citation : (2015) 2 ShimLC 942

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

Bench : Single Bench

Advocate : Sandeep Sharma, Senior Advocate and Pankaj Negi, Advocate, for the Appellant; Mehar Chand, Advocate vice, Archana Dutt, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. Subject matter of this appeal is judgment and award, dated 09.10.2007, made by the Motor Accident Claims Tribunal-Sirmaur District at Nahan, H.P. (for short "the Tribunal") in M.A.C. Petition No. 60-N/2 of 2001, titled as Shri Ram Chander versus The State of Haryana and others, whereby compensation to the tune of Rs. 2,94,000/- with interest @ 7.5% per annum from the date of the petition till its realization came to be awarded in favour of the claimant-injured and the insurer came to be saddled with liability (for short "the impugned award"). The owner-insured, driver and claimant-injured have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

2. Only the appellant-insurer has questioned the impugned award on the ground that the Tribunal has fallen in an error in saddling it with liability.

3. Thus, the only question to be determined in this appeal is whether the Tribunal has fallen in an error in saddling the appellant-insurer with liability?

4. In order to determine the issue, it is necessary to give a brief resume of the

facts of the case, the womb of which has given birth to the appeal in hand.

5. The claimant-injured filed claim petition before the Tribunal seeking compensation on the ground that he became the victim of a vehicular accident, which was caused by the driver, namely Shri Ram Swaroop, while driving bus, bearing registration No. HR-37-8718, rashly and negligently, on 09.04.2000, at about 2.30 P.M., at place Bhooppur, Tehsil Paonta Sahib.

6. The respondents in the claim petition resisted the claim petition on the grounds taken in the respective memo of objections.

7. Following issues came to be framed by the Tribunal on 17.08.2002:

"1. Whether the petitioner sustained injuries in a motor accident caused by rash and negligent driving of a bus (No. HR-37-8718) by the respondent No. 3, Ram Swaroop at Bhuppur village in Paonta Sahib tehsil, on April 9, 2000, as alleged? OPP

2. If issue 1 is proved, what amount the petitioner is entitled to receive as compensation and from whom? OPP

3. Whether respondent 3, Ram Swaroop, did not have any valid and effective driving licence at the time of the accident? If so, to what effect? OPR4

4. Relief."

8. The claimant-injured led evidence in support of his claim. The driver himself appeared in the witness box as RW1. It is apt to record herein that the appellant-insurer has not led any evidence.

9. The Tribunal, after scanning the evidence, oral as well as documentary, awarded compensation in favour of the claimant-injured and saddled the appellant-insurer with liability.

10. There is no dispute about the findings returned by the Tribunal on issue No. 1. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

11. Issue No. 2 and 3 are interdependent. The appellant-insurer has taken a ground that Ram Swaroop, the driver of the offending vehicle, was not having a valid and effective driving licence at the relevant point of time. It was for the appellant-insurer to discharge the onus, has not led any evidence to prove the same, thus, has failed to discharge the onus.

12. The driver, namely Shri Ram Swaroop, himself appeared in the witness box and has given the details of his driving licence.

13. It was for the appellant-insurer to plead and prove that the driver of the offending vehicle was not having a valid and effective driving licence at the relevant point of time and the owner-insured has committed a willful breach of the terms and conditions of the insurance policy, has not led any evidence, thus, has failed to prove the said factum.

14. In the given circumstances, the Tribunal has rightly made discussions in para 34 of the impugned award. Accordingly, the findings returned by the Tribunal on issues No. 2 and 3 are upheld.

15. Having said so, the Tribunal has rightly directed the appellant-insurer to satisfy the award, which is a meager amount.

16. Viewed thus, the appeal merits to be dismissed and the impugned award is to be upheld. Accordingly, the impugned award is upheld and the appeal is dismissed.

17. Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award through payee''s account cheque. Send down the record after placing copy of the judgment on Tribunal''s file.