

(2010) 09 SHI CK 0217
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 294 of 2006

National Insurance Company Limited	Vs	APPELLANT
Smt. Vidya Devi and Others		RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 169, 170, 173

Citation : (2011) 1 TAC 424

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the appellant/Insurance Company u/s 173 of the Motor Vehicles Act against the award of the Court of learned Motor Accident Claims Tribunal, Mandi, dated 2.6.2006, vide which the claim petition filed by the claimants/respondents No. 1 to 4 was allowed and compensation to the extent of Rs. 4,95,000/- alongwith interest was awarded in favour of the claimants and as against the appellant/company. 2. Briefly stated, the facts of the case are that a claim petition u/s 166 of the Motor Vehicles Act was filed by respondents No. 1 to 4, hereinafter also referred to as "the claimants". It was filed in regard to the death of Suresh alias Devi Ram who was going to his house in three wheeler No. HP-05-1234. It was alleged that respondent Ganga Ram (respondent No. 4) before me was driving the three wheeler in a high speed and it reached near village Falfani, where he could not control the three wheeler and it struck with tractor No. HP-31-4160 coming from the opposite direction. The three wheeler went off the road and both the passengers sitting in the said three wheeler also rolled down and died on the spot. It was further alleged that respondent No. 1 jumped out of the three wheeler to save himself and did not disclose the fact of above said accident to any one and ran away from the place of occurrence. Respondent Ganga Ram managed to lodge an FIR by suppressing the facts. It was alleged that the deceased was serving in Ayurvedic Department

and was earning Rs. 8,000/- per month.

3. In the reply filed by respondent Ganga Ram and Roop Lal, the owner of the tractor, it was pleaded that Devi Ram, other occupant, was nephew of respondent No. 1. On 30.4.2004, the said Devi Ram alias Chhotu was going to his in-laws house and he had hired the three wheeler of respondent No. 1 to his house to bring his wife and respondent No. 1 gave his three wheeler since the said Devi Ram alias Chhotu was a competent driver. It was denied that deceased Suresh alias Devi Ram was sitting in the vehicle as a passenger. The said Devi Ram alias Chhotu took the three wheeler to the house of his in-laws and respondent No. 1 went to his house and slept there. He received a telephonic call that an accident had taken place and it was found that the said Devi Ram alias Chhotu was alone driving the three wheeler and there was no occupants in the three wheeler. Insurance Company/Respondent No. 2 filed reply that the driver was not holding a valid and effective driving licence and the vehicle was driven in violation of the terms and conditions of the insurance policy and the Insurance Company is not liable.

4. On the pleadings of the parties, the following issues were settled by the learned Tribunal:

1. Whether on 30.4.2004 at about 9 P.M. near village Falfani, respondent No. 1 was driving the three wheeler bearing No. HP 05/1234 in rash and negligent manner resulting in the death of Suresh alias Devi Ram, as alleged? OPP

2. If issue No. 1 is proved, whether the petitioners are entitled for compensation? If so to what amount and from whom? OPP

3. Whether respondent No. 1 was not holding a valid and effective driving licence and the vehicle was being driven in violation of the terms and conditions of the insurance policy? OPR-2

4. Relief.

5. On conclusion of the case, the learned Tribunal held that the claimants are entitled to the compensation to the extent of Rs. 4,95,000/- alongwith interest payable by the appellant/Insurance Company.

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

7. The main plea taken by the learned Counsel for the appellant was that the learned Tribunal had wrongly held that the vehicle was being driven by respondent No. 4 Ganga Ram and had accordingly fastened the liability upon the appellant. It was also submitted that the evidence led clearly shows that the vehicle was being driven by the said Devi Ram alias Chhotu, who was not having any driving licence and, therefore, the Insurance Company was not liable to pay any compensation. In the alternative, it was also pleaded that the learned Tribunal should have conducted an enquiry into the cause of the accident and

should have fastened the liability, which was not done and since it was a case of two vehicles involved in the accident, applying the principle of contributory negligence, the appellant/Insurance Company cannot be saddled with the whole liability. On the other hand, learned Counsel for the respondent(s) had supported the impugned award for the reasons given therein.

8. The first question which arises for consideration is as to the findings of the learned Tribunal that the vehicle was being driven by respondent No. 1 Ganga Ram.

9. A perusal of the record shows that the claimants have alleged that the deceased was travelling in the vehicle which was being driven by respondent Ganga Ram. To substantiate their case, the petitioners have examined PW-2 Vidya Devi, petitioner, who is not an eye witness to the accident and, therefore, her statement is not very material.

10. To rebut this evidence, respondent had examined RW-1 Ganga Ram, the alleged driver of the three wheeler, who stated that he had given the vehicle to Devi Ram to drive and he denied the suggestion that he was driving the vehicle at the relevant time. The respondent had not examined any other witness to prove and that he was not driving the three wheeler on the day of the accident. The respondent has relied upon the FIR lodged by him Ext. PB. A perusal of this report shows that respondent Ganga Ram had alleged on the next day of the accident that he received a telephonic message at 7.00 A.M. that his three wheeler had met with an accident. He alleged that he had given his three wheeler to Devi Ram alias Chhotu, who knew driving and was his nephew and had allowed him to take three wheeler to his in-laws house. He alleged that the said Devi Ram alias Chhotu himself was driving the vehicle at the time of accident. His statement in Court does not establish that the said Devi Ram alias Chhotu was his nephew or the said Devi Ram alias Chhotu knew driving and, therefore, he gave him the three wheeler for being driven. A perusal of the record also shows that he filed a joint reply alongwith respondent No. 3, owner of the tractor and it was pleaded that the vehicle was being driven by the said Devi Ram alias Chhotu and not by him and he had given the vehicle to the said Devi Ram alias Chhotu for being driven by him. The learned Tribunal has also considered the question that he had no business to file the joint reply and respondent No. 1 had tried to shift the liability upon some other person, so that he was not implicated in the case. To my mind, there was no occasion for respondent No. 1 to have filed the joint reply alongwith the owner of the other vehicle i.e. tractor and he tried to fix the liability upon the said Devi Ram alias Chhotu to avoid a criminal case against him. He rightly tried to shift the liability and respondent No. 3 had every reason to file the joint reply alongwith him since by this process, respondent No. 1 would have been saved of the liability in the criminal case and respondent No. 3, the owner of the tractor would have escaped the liability since his vehicle was not insured. Therefore, in my view, there was connivance in between these respondents in filing the joint reply and they tried

to struck a deal in this manner. The other reason which support the above conclusion is that respondent No. 3 did not examine the driver of the tractor, who was the only eye witness to the occurrence, who could have deposed about the manner in which the accident took place. Therefore, adverse inference has to be drawn against respondent No. 3 for not examining the driver of the tractor being a material witness.

11. In view of the above discussion, it is clear that the learned Tribunal had rightly concluded that the vehicle was not being driven by the said Devi Rm alias Chhotu, but was being driven by respondent No. 1 Ganga Ram as alleged in the claim petition. The doctrine of *res ipsa loquitur* clearly applies and since it was a case of two vehicles involved in the accident and there is no specific evidence to show that the driver of the tractor was not rash or negligent and, therefore, in my view, the responsibility ought to have been fastened upon both the parties, that is, the Insurance Company as well as the owner of the tractor, who are jointly liable to pay the compensation in equal shares. The findings in that regard of the learned Tribunal are liable to be modified accordingly.

12. Coming to the plea of the learned Counsel for the appellant that the learned Tribunal should have conducted an enquiry into the manner of accident and their application u/s 169 of the Motor Vehicles Act should have been allowed. The same was rightly rejected by the learned Tribunal since it was filed at the stage when the Insurance Company had already closed its evidence. There was no question of conducting an independent enquiry by the learned Tribunal, once the claim petition was being tried by the learned Tribunal and both the parties had been given an opportunity to prove the manner of accident. Thus, there is no substance in the plea raised by the learned Counsel for the appellant that an independent enquiry should have been ordered by the learned Tribunal. It was within the rights of the parties to lead evidence in support of their claims and due opportunity was given to both the parties and, therefore, there is no merit in the submission made by the learned Counsel for the appellant, which is rejected being without any substance.

13. No arguments were raised and rightly so in regard to the amount of compensation when there is nothing on record to show that the appellant had been permitted to take defence u/s 170 of the Motor Vehicles Act and as such, the insurance Company could not challenge the findings in regard to quantum of compensation.

14. In view of the above discussion, I accordingly hold that the findings recorded by the learned Tribunal directing the appellant/Insurance Company only to pay the compensation deserves to be modified and the amount shall be payable as assessed by the learned Tribunal alongwith interest by both the parties in equal shares, that is, appellant and respondent No. 6, owner of the tractor. The appeal is allowed accordingly to this extent.