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(2015) 04 SHI CK 0069

In the High Court Of Himachal Pradesh

Case No : FAOs Nos. 257, 258 of 2006, 436 of 2007, 445, 521 of 2008, 23 and 32 and 148 of 2012

National Insurance Company Ltd. and Others APPELLANT

Vs

Sumna and Others RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Citation : (2015) 04 SHI CK 0069

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

Bench : Single Bench

Advocate : Devyani Sharma, for the Appellant

Final Decision : Disposed off

Judgement

Mansoor Ahmad Mir, C.J.

CMP (M) No. 1757 of 2012 and CMP No. 793 of 2012 in FAO No. 23 of 2012

1. The appellant has moved CMP No. 793 of 2012 to delete the name of deceased respondent No. 1 Shri Devi Ram from the array of the respondents, who has passed away on 23.12.2011. CMP (M) No. 1757 of 2012 has been moved to condone the delay in filing the aforesaid application.

2. Granted. The name of respondent No. 1 is deleted from the array of the respondents. The Registry to make necessary entries in the cause title. The applications are disposed of.

CMP (M) 1880 of 2012 and CMP No. 1879 of 2012 in FAO No. 32 of 2012

3. The appellant has moved CMP No. 1879 of 2012 for bringing on record the legal representatives of deceased respondent No. 1 Mohan Singh Bundel, who has passed away on 15.11.2011. CMP(M) No. 1880 of 2012 has been moved to condone the delay in filing the aforesaid application.

4. Granted. The legal representatives of deceased respondent No. 1 Mohan Singh

Bundel are ordered to be brought on record and shall figure as party respondents No. 1(a) to 1(d) in the appeal. Registry to make necessary entries in the cause title. The application stands disposed of.

FAO No. 32 of 2012

5. Issue notice to respondents No. 1 (a) to 1(d). Shri Virender Singh Chauhan, Advocate, waives the same on behalf of the aforesaid respondents.

FAOs No. 257, 258 of 2006, 436 of 2007, 445, 521 of 2008, 23 and 32 and 148 of 2012.

6. All these eight appeals have been preferred against the awards, passed on different dates, in different claim petitions, by the Motor Accident Claims Tribunal, (II), Shimla (hereinafter referred to as "the Tribunal"), which are outcome of a motor vehicular accident involving vehicle-Mahindra Pick-Up bearing registration No. HP-09A-0935 (hereinafter referred to as "the impugned awards"). Thus, I deem it proper to determine all these appeals by a common judgment.

7. In FAOs No. 257, 258 of 2006, 445, 521 of 2008 and 148 of 2012, the insurer-National Insurance Company Limited has questioned the impugned awards passed in MAC Petition No. 57-S/2 of 2002, dated 25.04.2006, MAC Petition No. 58-S/2 of 2002, dated 25.04.2006, MAC Petition No. 71-S/2 of 2002, dated 03.05.2008, RBT No. 19-S/2 of 2005/2002, dated 05.07.2007 and MAC Petition No. 3-S/2 of 2009, dated 09.11.2011, respectively, on grounds taken in the memo of appeals.

8. By the medium of FAOs No. 436 of 2007 and 32 of 2012, the claimants have disputed the adequacy of the compensation and questioned the impugned awards made by the Tribunal in RBT No. 19-S/2 of 2005/2002, dated 05.07.2007 and MAC Petition No. 3-S/2 of 2009, dated 09.11.2011, respectively, on the grounds taken in the memo of appeals.

9. In FAO No. 23 of 2012, the owner-insured has questioned the impugned award passed in MAC Petition No. 3-S/2 of 2009, dated 09.11.2011, to the extent of granting right of recovery to the insurer, on the grounds taken in the memo of appeal.

10. The driver has not questioned the impugned award. Thus it has attained finality, so far as it relates to him.

11. The facts are not in dispute. However, I deem it proper to give brief resume of the case herein.

12. The claimants being victims of the motor vehicular accident had filed claim petitions before the Tribunal for grant of compensation, as per the break-ups given in the respective claim petitions. It is averred in the claim petitions that driver, namely, Veejender Singh Bundel, was driving vehicle-Mahindra Pick-Up bearing registration No. HP-09A-0935, rashly and negligently, on 11.04.2002, at

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about 7.00 a.m., near Dhaneri, Tehsil and Police Station Theog, District Shimla, caused the accident and Shri Joginder Singh, Rajinder Singh, Partap Verma, Bhagat Ram and Shyam Lal sustained injuries and succumbed to the injuries.

13. The fact of the insurance is not in dispute. The only dispute herein is whether the insurer has to satisfy all the impugned awards or only to the extent, as per the insurance contract.

14. As per the insurance policy, Ext. RW-3 on the file of MAC Petition No. 58-S/2 of 2002, the insurance contract covers only 2 + 1 persons, meaning thereby, the policy covers the risk of the driver and two passengers. The insurer has to satisfy the liability as per the terms and conditions of the insurance contract.

15. My this view is fortified by the judgment of the Apex Court in the case titled as United India Insurance Co. Ltd. Vs. K.M. Poonam and Others, (2011) ACJ 917 : (2011) 3 JT 149 : (2011) 162 PLR 477 : (2011) 2 RCR(Civil) 194 : (2011) 2 SCALE 568 : (2011) 2 SCR 1026 : (2011) 3 TAC 376 : (2011) AIRSCW 2802 . It is apt to reproduce relevant portion of para 24 of the judgment herein:

"24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle."

16. It is also apt to reproduce para 15 of the judgment of the Apex Court in the case titled as National Insurance Co. Ltd. Vs. Anjana Shyam and Others, (2007) ACJ 2129 : AIR 2007 SC 2870 : (2007) 4 CTC 593 : (2007) 10 JT 209 : (2008) 149 PLR 179 : (2007) 10 SCALE 116 : (2007) 7 SCC 445 : (2007) 9 SCR 78 : (2007) AIRSCW 5237 : (2007) 5 Supreme 856 , herein:

"15. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer

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would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading."

17. Learned Counsel for the appellant-Insurance Company argued that at the best, the appellant-insurer-Insurance Company has to satisfy the two awards, which are at higher side and rest of the liability is on the insured-owner.

18. Viewed thus, the total compensation amount of two awards in MAC Petition No. 58-S/2 of 2002, titled as Smt. Sumna alias Sharda and others versus Sh. Vijender Bundel alias Nittu and others, dated 25.04.2006 and MAC Petition No. 71-S/2 of 2002, titled as Dropti Devi versus Shri Mohan Lal and others, dated 03.05.2008, is to be satisfied by the insurer-Insurance Company and the compensation amount awarded in other awards, is to be satisfied by the insurer with the right of recovery. The insurer-Insurance Company is at liberty to move an application for recovery before the Tribunal.

19. The claimants have filed FAOs No. 436 of 2007 and 32 of 2012, challenging the awards made by the Tribunal in RBT No. 19-S/2 of 2005/2002, dated 05.07.2007 and MAC Petition No. 3-S/2 of 2009, dated 09.11.2011, respectively, for enhancement of the compensation.

20. I have gone through the claim petitions, evidence and the findings recorded by the Tribunal.

21. I am of the considered view that the amount of compensation awarded is just and appropriate, cannot be said to be inadequate. It is also to be kept in mind that the insurance company has to satisfy only two awards, which are at higher side and the rest are to be satisfied by the insurer at the first instance with right of recovery. Viewed thus, the claimants have not made out a case for enhancement. Accordingly, the appeals filed by the claimants, i.e. FAOs No. 436 of 2007 and 32 of 2012 are dismissed.

22. In FAO No. 23 of 2012, the insured-owner has questioned the impugned

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award so far as it relates to saddling him with the liability.

23. I have discussed the issue hereinabove. The insurer has to satisfy the liability in terms of the insurance contract, as discussed hereinabove. The Tribunal has rightly granted the right of recovery to the insurer-Insurance Company.

24. Having said so, the impugned awards are modified, as indicated above and the appeals are disposed of.

25. The Registry is directed to release the entire compensation amount in favour of claimants, strictly as per the terms and conditions, contained in the impugned award.

26. Send down the records after placing a copy of the judgment on the file of the claim petitions.

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