

(2014) 05 SHI CK 0104
In the High Court Of Himachal Pradesh
Case No : FAO No. 361 of 2008

National Insurance Company Ltd.

APPELLANT

Vs

Madan Lal and Others

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Citation : (2014) 05 SHI CK 0104

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

Bench : Single Bench

Advocate : Suneet Goel, Advocate for the Appellant; Naresh Kaul, Advocate for Respondents Nos. 1(a), 1(b), 2 and 3 and Mr. Neeraj Gupta, Advocate for Respondents Nos. 4 to 9, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. Challenge in this appeal is to the award, dated 31.3.2008, passed by Motor Accident Claims Tribunal (III), Kangra, (for short, the Tribunal), in Claim Petition No. 48-D/2003, titled Laxmi Devi and others versus Ram Charan Mehta and others, whereby compensation to the tune of Rs. 6,26,000/-, with interest at the rate of 7.5% per annum from the date of filing of the Claim Petition till its realization, came to be awarded in favour of the claimants and the appellant-insurer was saddled with the liability, (for short, the impugned award).

2. The appellant-insurer has questioned the impugned award on the ground that the owner/insured and the driver have committed breach of the insurance policy inasmuch as the deceased was traveling in the ill-fated vehicle as gratuitous passenger and not as representative of the owner of the goods, as has been held by the Tribunal.

3. Brief facts necessary for the disposal of the present appeal are that the claimants preferred the Claim Petition for grant of compensation to the tune of Rs. 20.00 lacs, as per the break-ups given in the Claim Petition, on the ground

that Sham Paul, working as casual labourer, B.S.N.L., Dharmashala, was traveling in Mahindra Jeep bearing No. HP-39A-2471, as casual labourer with the goods and was engaged for loading and unloading purpose. The said vehicle met with an accident on 21st July, 2003 at about 4.00 a.m., at Dobmajra, on Nangal Ropar Road, while going to Chandigarh from Dharamshala, the deceased sustained injuries and resultantly died. About the said accident, FIR No. 171 of 2003 was also registered with Police Station, Kharar.

4. Respondents resisted the claim set out in the Claim Petition by filing reply.

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

1. Whether the deceased Sham Paul died in the motor accident caused due to the rash and negligent driving of respondent No. 2?... OPP

2. If issue No. 1 is decided in favour of the petitioners to what amount of compensation the petitioners are entitled and from whom?... OPP

3. Whether the vehicle was not insured at the relevant time by respondent No. 3?... OPR(3).

4. Whether the terms of policy were violated as the deceased was gratuitous passenger and the driver was not having the effective and valid driving license?... OPR(3).

5. Relief.

6. Claimants have led evidence, which has remained un-rebutted.

7. Respondents No. 1 and 2 (owner and driver) have examined Subhash Nath, Anup Singh and Suresh Mehta as RW-1, RW-2 and RW-3, respectively, while respondent No. 3 (insurer-appellant), in order to prove Issues No. 3 and 4, has examined Charan Dass, DGM, BSNL as RW-4. The Tribunal after examining the evidence held that the insurer-appellant has failed to prove that the deceased was a gratuitous passenger and held that the claimants have proved, by leading evidence, that the deceased was traveling in the offending vehicle with the goods for loading and unloading purpose.

8. Claimants, insured/owner, driver of the offending vehicle and the insurer-appellant have chosen not to challenge the impugned award in regard to adequacy of compensation. The only ground of challenge is that the insurance company was wrongly saddled with the liability to indemnify the impugned award. Thus, the impugned award has attained finality, except the question whether the Insurance Company was rightly saddled with the liability.

9. I have gone through the pleadings and scanned the evidence.

10. The insurer-appellant has failed to lead any evidence to prove that the deceased was traveling in the offending vehicle as gratuitous passenger. On the contrary, there is evidence on the record that the deceased was traveling with

the goods as casual labourer and had to load/unload the goods, which fact is also admitted by the owner and the driver of the vehicle, i.e. respondents No. 1 and 2, respectively, in paragraph 2 of their reply filed to the Claim Petition, which is reproduced hereunder:

2. In reply to paras 8 to 10 of the petition: It is submitted that the contents of this para are admitted to the extent that the accident took place and F.I.R. was registered and that the rest of the contents are wrong and hence denied. It is submitted that the vehicle was hired for carrying articles and the deceased was deputed to load/unload the articles. It is emphatically denied that the vehicle was driven rashly and negligently.

11. In the given circumstances, it is held that the Tribunal has rightly recorded findings under Issue No. 4 against the appellant-insurer and the said findings are accordingly upheld.

12. Learned counsel for the appellant-insurer has not advanced any argument insofar as Issue No. 3 is concerned. Respondent No. 3 has failed to prove that the vehicle was not insured. Moreover, in the memo of appeal, the appellant-insurer has admitted that the vehicle was duly insured.

13. Having said so, the appeal merits dismissal and the impugned award merits to be upheld. However, before parting with, it is worthwhile to record that during the pendency of the appeal, the mother of the deceased, namely, Laxmi Devi (respondent No. 1 herein) passed away. This Court, vide order dated 24.8.2009, while bringing on record the legal representatives of Laxmi Devi, has ordered that the impleadment of the said legal representatives will not entitle them to the award amount. Thus, it is held that the Claimants before this Court are only respondents No. 2 and 3 i.e. widow Smt. Parveen and minor son Master Parshant Thakur and they are held entitled to the compensation awarded by the Tribunal, as they are the persons who have lost source of dependency. The Tribunal has rightly awarded Rs. 2.00 lacs in favour of mother Laxmi Devi, Rs. 2,26,000/- in favour of widow Parveen and Rs. 2.00 lacs in favour of minor son Master Parshant Thakur. The share of the mother Laxmi Devi (now deceased) shall go to minor son and be deposited in his name in terms of the conditions contained in the impugned award. The Registry is directed to release the award amount in favour of the widow and the son, as stipulated in the impugned award.

14. The impugned award is modified and the appeal stands disposed of accordingly.