

(2009) 08 SHI CK 0039
In the High Court Of Himachal Pradesh

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Kamla and Others

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2011) ACJ 1550 : (2009) 2 ShimLC 507

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

Bench : Single Bench

Final Decision : Dismissed

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 passed by the learned Motor Accident Claims Tribunal-II, Solan, dated 10.3.2004, vide which the petition filed by respondents No. 1 to 4 u/s 163-A of the Motor Vehicles Act was allowed as against the appellant and others and a sum of Rs. 2,48,000/- was awarded in favour of respondents No. 1 to 4.

2. Briefly stated, the facts of the case are that a claim petition u/s 163-A of the Motor Vehicles Act was preferred by Whether reporters of Local Papers may be allowed to see the judgment? Yes. respondents No. 1 to 4 as against respondent No. 5 who was impleaded as driver and as against respondent No. 6, who was impleaded as owner/respondent No. 3, while Insurance Company i.e. the appellant was impleaded as respondent No. 2. It was alleged by the petitioners that the deceased Kamal was traveling in truck bearing No. HP-11-0721 from Delhi to Arki after selling his produce on 2.7.1996. The truck was being driven by respondent No. 1 Madan in a rash and negligent manner. The deceased suffered injuries in an accident that took place near Mehmoodpur, Police Station Malana, District Ambala, Haryana, and succumbed to the injuries at Chandigarh. The deceased was agriculturist and Mason by profession and was earning Rs. 3,000/- per month. Respondents No. 1 to 4 being widow, sons and mother of the deceased, claimed that they were dependent upon the deceased and they filed

the petition claiming compensation.

3. The owner and driver denied that the vehicle was involved in the accident. The Insurance company took up the plea that the driver was not having a valid and effective driving licence. They also took up the plea that the deceased was not employee of the insured and was traveling in the vehicle as a gratuitous passenger. The petition was tried by the learned Tribunal who held that the accident took place due to rash and negligent driving of the driver of the vehicle. It was held that the deceased was not traveling as a gratuitous passenger. It was also held that it has not been proved that the driver was not having a valid and effective driving licence. Accordingly, the petition was allowed as against all the respondents but the Insurance Company was directed to deposit the amount in full.

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

5. The appellant has challenged the findings of the learned Tribunal on two grounds, firstly that no accident of the truck had taken place and secondly, that the deceased was a gratuitous passenger.

6. Coming to the first point that no accident of the truck had taken place, the learned Tribunal had referred to the testimony of PW Gurnam Singh, who had proved the report Ext. PW1/A in which it was clearly mentioned that the deceased was on return journey of the truck when the accident took place. The proceedings u/s 174 Cr.P.C. were conducted and report was filed and no negligence was attributed to the truck driver mainly on the ground that it was reported in the report that the deceased was traveling in the tool box of the truck and was hit by the branch of the Kikker tree. The owner of the truck examined himself as RW-1 and stated that his truck had not met with any accident and no case was registered against the driver. Respondent No. 1/driver who examined himself as RW-2 stated that his truck has not met with any accident.

7. The learned Tribunal after referring to the evidence had concluded that in case the driver had allowed the deceased to sit in the tool box, he cannot be absolved of his liability since his act was negligent in allowing the deceased to sit in the tool box. Therefore, the vehicle may not have been directly hit with any other object, but the accident had taken place during the course of the driving of respondent No. 1. The learned Tribunal had concluded on the basis of the evidence that it has been proved that the driver was driving the vehicle rashly or negligently. In a petition u/s 163-A of the Motor Vehicles Act, it is not necessary to be proved that the driver was rash or negligent but it has to be proved only that the injury or death has been caused due to accident arising out of the use of motor vehicle and accordingly, the findings of the learned Tribunal under Issue No. 1 are liable to be affirmed that the deceased had suffered injuries as a result of the use of motor vehicle and the petitioners are entitled to compensation.

8. Coming to the second plea taken by the learned Counsel for the appellant that

the deceased was a gratuitous passenger, a perusal of the reply filed by respondent No. 2/Insurance Company shows that they had only pleaded that the deceased was admittedly not employee of the insured and was traveling in the truck as a gratuitous passenger. Thus, it was submitted that the Insurance Company was not liable. Reliance was also placed upon the decision in National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, wherein the plea was taken that the owner himself travel in the cabin of the vehicle and not with the goods so as to be covered u/s 147. However, in case the driver permits a passenger to travel in the tool box, he cannot escape from the liability that he was negligent in driving the vehicle and moreover, in a petition u/s 163-A of the Motor Vehicles Act, rash or negligent driving is not to be proved and, therefore, this decision does not help the appellant.

9. The learned Counsel for the appellant had also relied upon the decision in National Insurance Co. v. Maghi Ram and Ors. Latest HLJ 2009 (HP) 532, wherein a learned Judge of this Court has considered the question and had observed that the Insurance Company is liable in respect of death or bodily injury to any person including the owner of goods or his authorized representative carried in the vehicle. It was observed that it is apparent that the goods must normally be carried in the vehicle at the time of accident.

10. The allegations made by the petitioners in the petition as well as in the evidence were that the deceased had gone after hiring the truck with his vegetable and was coming in the same vehicle when the accident took place. The learned Counsel for the claimants/respondents No. 1 to 4 had relied upon the decision of Hon'ble Punjab & Haryana High Court in National Insurance Co. Ltd. Vs. Smt. Urmila and Others, , wherein it was observed that a passenger was returning after selling his goods when the vehicle turned turtle due to rash and negligent driving. Insurance Company seeks to avoid its liability on the ground that the deceased was no longer owner of the goods as he had sold them off. It was observed that the deceased had hired the vehicle for transporting his animals for selling and was returning in the same vehicle. It was held that the deceased was not an unauthorized/gratuitous passenger in the vehicle till he reached the place from where he had hired the vehicle.

11. The above decision clearly applies to the present facts, which are similar to the facts of the case and accordingly, I am inclined to hold that the deceased was not an unauthorized/gratuitous passenger. No conditions of the insurance policy have been proved that the risk of the owner of goods was not covered in the insurance policy and as such, there is no substance in the plea raised by the learned counsel for the appellant, which is rejected accordingly. No arguments were advanced in regard to the compensation or the amount and keeping in view the evidence, it is clear that the learned Tribunal had rightly concluded on the basis of the evidence that the income of the deceased was Rs. 3,000/- P.M., while loss to the family was to the extent of Rs. 2000/- P.M. Keeping in view the age of the deceased, the multiplier of 17 was applied and no case law was cited

to show that the said multiplier was excessive or some lesser multiplier ought to have been applied. The learned Tribunal had applied the formula under the schedule of the Motor Vehicles Act u/s 163-A and had accordingly, assessed the compensation, which has not been disputed specifically and as such, the findings of the learned Tribunal granting the compensation to the extent of Rs. 2,48,000/-, do not call for an interference by this Court.

12. In view of the above discussion, there is no merit in appeal filed by the appellant, which is dismissed accordingly alongwith costs payable to respondents No. 1 to 4.

13. In view of the final disposal of the main appeal, all the pending miscellaneous applications, if any, shall also stand disposed of.