
(1996) 12 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No. 18 of 1986 with Cross-objection No. 104 of 1986

New India Assurance Co. Ltd.

APPELLANT

Vs

Seema Bhup and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1998) ACJ 1147

Hon'ble Judges : R.L. Khurana, J;A.L. Vaidya, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Devyani Kuthiala, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—By virtue of this judgment, we propose to dispose of the above noted appeal and cross-objections arising out of award dated 5.10.1985 of the learned Motor Accidents Claims Tribunal, Shimla, hereinafter referred to as "the Tribunal", made u/s 110-A, Motor Vehicles Act, 1939.

2. In an accident which took place on 14.6.1981 at about 3.30 p.m. in the Park area of Khalini, involving truck No. HPS 2374, grievous bodily injuries were sustained by respondent No. 1, Seema Bhup, hereinafter referred to as "the claimant".

3. At the relevant time, the claimant was a minor of about 8 years of age. She has attained majority during the pendency of the present appeal before this Court.

4. The claimant approached the learned Tribunal u/s 110-A, Motor Vehicles Act, 1939, seeking compensation to the tune of Rs. 2,50,000/- for the bodily injuries sustained by her in the accident. Respondent Nos. 2 and 3 are the owner and driver respectively of the truck HPS 2374, while the appellant is the insurer thereof. They are being referred accordingly hereinafter.

5. As per the averments made in the petition, the claimant on the relevant day was proceeding on foot from Khalini to attend a function in her school. She was accompanied by her mother, younger sister and an orderly. Truck bearing No. HPS 2374, while being driven in a rash and negligent manner coming from behind, struck against a parapet and rolled down the road. In such process it happened to strike against the claimant, her younger sister and mother. While the younger sister of the claimant died, the claimant and her mother received grievous injuries.

6. The owner and driver of the truck, while admitting the accident, denied rash and negligent driving on the part of the driver. It was averred that the accident took place since the steering wheel of the truck got jammed all of a sudden, while negotiating a curve.

7. The insurer also denied the rash and negligent driving on the part of the driver. It was averred that the accident occurred due to sudden mechanical defect. Alternatively, it was pleaded that the liability of the insurer under the policy of insurance was limited to Rs. 50,000/-.

8. The learned Tribunal on consideration of the evidence led before it came to the conclusion that the accident was as a result of rash and negligent driving on the part of the driver. The claimant was found entitled to compensation of Rs. 75,000/-, for the bodily injuries sustained by her. Though liability of the insurer was found to be limited to the extent of Rs. 50,000/- in respect of each accident, the learned Tribunal came to the conclusion that since two persons were injured and one died in the accident, the total liability of the insurer was to the extent of Rs. 1,50,000. Therefore, it was jointly and severally liable along with the owner and driver to the extent of the whole amount as awarded in favour of the claimant.

9. Be it stated that by the same award the learned Tribunal awarded compensation of Rs. 50,000/- and Rs. 36,000/-, respectively in respect of the injuries sustained by the mother of the claimant and in respect of the death of her younger sister.

10. Feeling aggrieved by the impugned award, the insurer has come up in appeal before this Court assailing the findings of the learned Tribunal making the insurer liable to the extent of whole of the amount of compensation awarded in favour of the claimant. It was averred that the learned Tribunal has misconstrued the provisions of the Motor Vehicles Act and the insurance policy under which total claim which could be awarded to each claimant against the insurer was limited to Rs. 50,000/-.

11. The claimant, who too felt dissatisfied with the impugned award, has preferred cross-objections assailing the quantum of compensation awarded in her favour. She also questioned the findings of the learned Tribunal holding the liability of the insurer to be limited to the extent of Rs. 50,000/-.

12. We have heard the learned Counsel for the parties and have also gone through the record of the case.

13. The question which arises for determination is whether the liability of the insurer is limited one and if so, to what extent?

14. It is well settled that the onus to prove the liability to be a limited one is on the insurer.

15. Exh. R-2 is alleged to be a true copy of the "renewal endorsement" whereby the insurance cover in respect of the truck HPS 2374 was renewed for a period of one year, that is, from 27.9.1980 to 26.9.1981. The accident took place on 14.6.1981, when this renewed insurance cover was in subsistence. A bare perusal of the same shows that there is no endorsement with regard to the limited liability of the insurer. The space regarding limit of liability has been left blank.

16. Save and except tendering into evidence such copy of insurance policy, no other evidence has been led by the insurer. So much so, the insurer neither got the production of the original policy by calling upon the owner nor the carbon copy thereof available with it was produced. Only a copy which is purported to be a true copy and without there being an endorsement with regard to its being a true and correct copy of the original was tendered into evidence. The same was not even proved in accordance with law. Therefore, no reliance can otherwise be placed on Exh. R-2.

17. Therefore, the liability of the insurance company in the absence of evidence to the contrary will have to be held to be unlimited. The findings of the Tribunal holding the liability of the insurer to be limited to Rs. 50,000/- are wrong and liable to be set aside.

18. Much reliance was placed by the learned Counsel for the insurer on Exh. R-1, the copy of insurance policy for the period 25.9.1979 to 24.9.1980, which contains an endorsement to the following terms as to the limit of liability:

Such amount as is necessary to meet requirements under the Motor Vehicles Act, 1939.

19. The insurer cannot take any benefit of Exh. R-1. Firstly, this insurance policy is not pertaining to the relevant period. This policy stood expired much before the occurrence of the accident. Secondly, neither the original nor the carbon copy thereof was placed on record. It is purported to be a true copy of the original without there being any certification to that effect by a competent person. Further the same has not been proved in accordance with law. Thirdly, Exh. R-2 vide which the insurance cover is alleged to have been renewed does not mention that the renewal was on the same terms and conditions, as previously existed. Fourthly, Exh. R-2 does not appear to have been issued in continuation of Exh. R-1. A perusal of Exh. R-1 shows that the period of indemnity stood expired on 24.9.1980, whereas such period of indemnity commenced from

27.9.1980, vide Exh. R-2. Therefore, the terms and conditions contained in Exh. R-1 cannot be transposed to and read in Exh. R-2.

20. It is no more *res integra* in view of the decision of this Court in *National Insurance Co. Ltd. v. Rukmani Devi*, F.A.O. (MVA) No. 88 of 1988; decided on 4.9.1996, that the claimants in an appeal by the insurance company cannot claim enhancement in the amount of compensation by way of cross-objections in view of the fact that it is not open to the insurance company to dispute the quantum of compensation awarded. To this extent the cross-objections preferred by the claimant are not maintainable.

21. Consequently, while the appeal filed by the insurer being F.A.O. (MVA) No. 18 of 1986 is dismissed, the cross-objections preferred by the claimant being C.O. No. 104 of 1986 are partly allowed. The impugned award is modified to the extent that the liability of the insurer is held to be an unlimited one. The insurer is, therefore, liable jointly and severally, along with the owner and driver of the truck to the extent of whole of the amount of compensation awarded in favour of the claimant. On the facts and in the circumstances of the case, parties are left to bear their own costs.