
(2008) 05 SHI CK 0023
In the High Court Of Himachal Pradesh

New India Assurance Company	Vs	APPELLANT
Ranmay Devi and Others		RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2009) ACJ 354 : (2008) 2 ShimLC 343

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The insurer of truck HP-06-641 is in appeal against the award dated 26.9.2001 passed by learned Motor Accident Claims Tribunal-II, Solan in MAC. Petition No. 18-S/2 of 1996, whereby an award of Rs. 3,18,500/- has been awarded in favour of claimants-respondents No. 1 to 5 and against respondent No. 10 Sher Singh, respondent No. 7 Bagat Ram and appellant who are owner, driver and insurer respectively of truck No. HP-06-641 with a direction that since truck HP-06-641 was insured with appellant at the time of accident, therefore, insurer shall indemnify the owner of the vehicle. The award amount shall be paid within 30 days from the date of award, failing which interest at the rate of 12% P.A. from the date of filing of the petition till realization shall be payable.

2. The facts in brief are that claimants-respondents No. 1 to 5 on 23.5.1996 filed a claim petition, claiming Rs. 6,00,000/- compensation on account of death of Ram Bahadur, aged 20 years, on 26.2.1996, due to injuries sustained by him in an accident on 19.8.1995 involving truck HP-06-641 and truck HID-2227. The further case of the claimants-respondents No. 1 to 5 is that deceased Ram Bahadur was working as cleaner-coolie on truck No. HID-2227 and was going from Chandigarh to Rampur. At Parwanoo barrier truck No. HP-06-641 came from the opposite side, struck against truck No. HID-2227. The accident took place due to rash and negligent driving on the part of driver of truck No. HP-06-641. In the accident Ram Bahadur sustained multiple injuries. Ram Bahadur was treated

at ESI Hospital Parwanoo, PGI Chandigarh and Rajendra Hospital, Patiala but he succumbed to his injuries on 26.2.1996. The claimants-respondents No. 1 to 5 were dependant on Ram Bahadur who was earning Rs. 2,000/- per month wages plus Rs. 30/- daily allowance. The deceased in all was earning Rs. 4,000/- per month. Bhagat Ram respondent No. 7 was driving truck No. HP-06-641 and the said truck was owned by Sher Singh respondent No. 10 at the time of accident. The appellant-New India Assurance Company was the insurer of the truck. The truck No. HID 2227 was owned by Amarjeet Kaur and Jaswant Singh. At the time of accident truck No. HID-2227 was being driven by respondent No. 6 Kabootar alias Gurdev Singh.

3. The respondent No. 6 Kabootar alias Gurdev Singh driver of truck No. HID-2227 had contested the petition by filing reply and has taken the plea that accident took place due to rash and negligent driving on the part of the driver of truck No. HP-06-641. He has pleaded that he is not liable to pay any compensation. The respondent No. 10 Sher Singh owner of truck HP-06-641 has also contested the petition by filing the reply. He has denied that the truck owned by him struck against the other truck as alleged in the petition. He has denied various paragraphs of the petition, generally. He has however, pleaded that truck HP-06-641 was insured with New India Assurance Company. According to him the claim made by respondents No. 1 to 5 in the claim petition is excessive and he is not liable to pay any compensation to them. He has pleaded that there is no fault of truck No. HP-06-641 in causing the accident. He pleaded that accident took place due to mechanical defect and not due to any act of rashness or negligence.

4. The appellant-insurer of truck No. HP-06-641 has also contested the petition by filing the reply. It has been pleaded that driver of truck No. HP-06-641 at the time of accident was not having a valid and effective driving licence to drive the truck. The said truck was being driven in violation of the Motor Vehicles Act, 1988 (for short Act). The truck in question did not have valid registration certificate, route permit and fitness certificate at the time of accident. The truck was being driven in breach of standard conditions of policy. In these circumstances insurer is not liable to pay any compensation. In any case, the compensation claimed is excessive, the petition is collusive. The accident did not take place due to rash and negligent driving on the part of driver of truck No. HP-06-641. The insurer later on filed separate application u/s 170 of the Act to contest the petition on all grounds available under the Act, which was allowed by the learned Tribunal on 7.7.2001.

5. The learned Tribunal after conclusion of the trial awarded a sum of Rs. 3,18,500/- to the claimants-respondents No. 1 to 5 as noticed above, hence this appeal by the insurer. The names of respondent No. 8 Amarjeet Kaur and respondent No. 9 Jaswant Singh owners of truck No. HID 2227 in the appeal were deleted vide order dated 4.12.2002 of this Court.

6. I have heard Mr. K.D. Sood and Mr. Balwant Singh, learned Counsel for the

appellant-insurer, Ms. Sunita Sharma, learned Counsel for respondents No. 1 to 5 and Mr. M.L Chauhan and Mr. Jagan Nath, learned Counsel for respondent No. 10 and gone through the record. The learned Counsel for the appellant has submitted that the learned Tribunal had allowed the application of the insurer u/s 170 of the Act, therefore, insurer is well within its rights to defend the claim of claimants-respondents No. 1 to 5 on all grounds including negligence, quantum and collusiveness of the respondents. He has submitted that the very filing of the petition is suspicious; no claimant has appeared before the learned Tribunal for making statement in support of the case. The petition was filed through power of attorney holder who prosecuted the claim petition as an advocate of claimants-respondents 1 to 5 and himself appeared as a witness on behalf of claimants-respondents 1 to 5 in the claim petition. The conduct of the advocate who represented the claimants-respondents 1 to 5 before the Tribunal is not as per ethics of the profession. It has not been proved by legal evidence that Ram Bahadur died in the accident involving truck No. HP-06-641 and the accident took place due to rash and negligent driving of the driver of the truck No. HP-06-641. The claimants-respondents 1 to 5 have not proved that they are the legal heirs of the deceased and income of the deceased has also not been proved by leading legal evidence. The learned Tribunal has not properly appreciated the material on record. Ms. Sunita Sharma, learned Counsel for the claimants respondents 1 to 5 has supported the impugned award and has submitted that strict compliance of CPC and other connected Acts is not required in the proceedings of compensation under the Act. The learned Counsel for the respondent No. 10 has submitted that the truck in question was insured at the time of accident with the Appellant-insurer and therefore, compensation, if any is to be paid by the insurer.

7. PW-1 R.K. Garg, Advocate has stated that he is the power of attorney holder of Rammy Devi, a copy of power of attorney is Ex.PA. Ram Bahadur was the son of Rammy Devi and Moti Ram was his father. He was working in a plastic factory at Ropar where for working on truck he was being paid Rs. 2,000/- per month wages and Rs. 30/- daily expenses. Ram Bahadur died in an accident involving truck No. HID 2227 and another truck HP-06-641. The accident took place due to rash and negligent driving of truck No. HP-06-641. Nirmay is the widow, Suman and Soni are the children of deceased. At this stage it is relevant to point out that vide order dated 27.5.2008 in CMP No. 889 of 2007 of this Court names of the claimants-respondents have been corrected. The claimants were dependant on the deceased. A copy of accident report is Ex.PB, report Ex.PC and power of attorney Ex.PE. In cross-examination he has stated that he does not have personal knowledge of the accident. In cross-examination conducted on behalf of the insurer he has admitted that he has filed the petition on behalf of the claimants as their advocate. He has power of attorney on behalf of Rammy Devi only and not from others but, volunteered that he has the power of attorney as an advocate. He has denied that he has no authority to make statement on behalf of the claimants. He has stated that he does not have any written proof

regarding the employment and income of the deceased.

8. RW-1 J.S. Kaith, Branch Manager New India Assurance Company, Shimla has stated that truck bearing registration No. HP-06-641 owned by Sher Singh Soni was insured with their insurance company from 21.8.1994 to 20.8.1995 vide policy Ex.R-1. This vehicle met with an accident on 19.8.1995. The insurance company paid the damage claim of the vehicle to the owner.

9. RW-2 Gurmukh Singh HC No. 61 has stated that he has brought the record concerning FIR No. 95/95 dated 19.8.1995, Police Station Parwanoo. This FIR was cancelled by the order of the Court. As per mechanical report the accident took place as front tyre of the truck No. HP-06-641 came out of the axle and brake pipe had broken down, tie rod after separating from steering was found near the axle. In cross-examination he has stated that as per FIR No. 95/95 the accident took place due to rash driving on the part of the driver of truck No. HP-06-641. The FIR was lodged by Gurdev Singh. No negligence of truck No. HID-2227 was found in the accident.

10. RW-3 Sher Singh has stated that he is the owner of truck No. HP-06-641, copy of insurance of the truck is Ex.R-1 which was valid at the time of accident, copy of registration certificate is Ex.R-2 and of route permit is Ex.R-3. The damage claim of the vehicle was processed which was ultimately passed by the insurance company. The accident did not take place due to the fault of the driver. The accident took place by sudden failure of the brakes. Ex.R-4 is the cancellation report and the Court had cancelled the challan vide Ex.R-5. This witness was not cross-examined on behalf of the insurer. In the cross-examination conducted on behalf of claimants-respondents 1 to 5 he has admitted that his truck struck against truck No. HID-2227. He said that he does not know Ram Bahadur. He has shown his ignorance that Ram Bahadur had died in the truck accident. The document Ex.R-6 mechanical inspection report was tendered in evidence separately by Counsel representing the driver of truck No. HP-06-641.

11. The learned Counsel for the appellant has submitted that R.K. Garg, Advocate presented the claim petition on behalf of the claimants-respondents 1 to 5 as an advocate and he later on appeared as a witness also in the case, therefore, statement made by him before the Tribunal in support of the case requires close scrutiny. The learned Counsel for the appellant has submitted that conduct of the advocate is against the professional ethics. The learned Counsel for the appellant has relied Rule 13 Section II of the Bar Council of India Rules, according to which an advocate should not accept a brief in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an advocate, if he can retire without jeopardizing his client interests. The contention raised on behalf appellant is of professional ethics. R.K. Garg, Advocate on having realized that he was to appear as a witness in the case should not have continued to appear in the case as an

advocate but once he has appeared as a witness his statement as a witness cannot be ignored all together and his statement is to be appreciated like any other witness. It is for the disciplinary authority of the advocate to consider the case regarding the conduct of said advocate. On behalf of the appellant nothing has been shown under what law the statement of PW-1 R.K. Garg is to be ignored all together.

12. The learned Counsel for the appellant has submitted that power of attorney in favour of PW-1 R.K. Garg by Ranmay Devi wife of Moti Ram is prior to the date of accident in which even pendency of the claim petition has been referred. Therefore, filing of claim petition on the basis of power of attorney Ex.PA is suspicious. No doubt in Ex.PA date of execution has been mentioned 4.7.1995 but when PW-1 appeared in the witness box, his attention was not drawn how date of execution of power of attorney Ex.PA could be 4.7.1995 when accident took place on 19.8.1995. On the Tribunal file there is Vakalatnama in favour of R.K. Garg, Advocate bearing stamps dated 23.5.1996. This Vakalatnama is thumb marked by Ranmay and Nirmay and signed by R.K. Garg and another person whose signatures are not clear. The claim petition was filed on 23.5.1996 before the Tribunal. PW-1 R.K. Garg in his cross-examination has stated that he has power of attorney of Ranmay Devi but volunteered that he has Vakalatnama on behalf of claimants 2, 3, 4 and 5. He has not been cross-examined regarding the Vakalatnama, therefore, appellant cannot take much help from power of attorney Ex.PA in support of the contention that filing of the petition is suspicious.

13. PW-1 in his statement has stated that accident took place due to rash and negligent driving on the part of driver of truck No. HP-06-641 and as a result of accident Ram Bahadur died. He has stated that the claimants-respondents 1 to 5 were the dependants of Ram Bahadur and Ram Bahadur was getting salary of Rs. 2,000/- per month and Rs. 30/- daily expenses while working on the truck. In para 19 of the petition the claimants-respondents 1 to 5 have pleaded their relationship with Ram Bahadur but in reply the insurer has replied said para as denied for want of knowledge. Thus, insurer in the reply has not denied that claimants-respondents are not the heirs of Ram Bahadur deceased. The learned Counsel for the insurer before the Tribunal has cross-examined PW-1 mainly on his competency to appear as a witness. In the cross-examination general question has been put to the PW-1 that he has given false statement regarding the employment of Ram Bahadur. RW-3 Sher Singh owner of truck No. HP-06-641 has stated in his statement that accident took place due to mechanical defect of the truck. He has also stated that his truck struck against truck HID-2227. The poor maintenance of the vehicle is an act of the negligence on the part of the owner of the truck and if accident takes place on account of poor maintenance of the vehicle then the owner is liable to pay the compensation. In accident information report Ex.PB Bhagat Ram has been shown driver of truck HP-06-641. Thus it is clear that Bhagat Ram was driving truck HP-06-641 at the time of accident, but he has not been examined. In these circumstances learned Tribunal has rightly held that accident took place due to

rash and negligent driving of truck HP-06-641. It has also been proved that claimants-respondents are the heirs of deceased Ram Bahadur.

14. The learned Counsel for the appellant-insurer has submitted that there is no legal evidence on record to show that Ram Bahadur died on 26.2.1996 due to accident involving truck No. HP-06-641 on 19.8.1995. Ex.PB is the Accident Information Report in which name of Ram Bahadur is included in the list of injured/deceased. In Ex.PB the vehicle involved in the accident has been shown as truck No. HP-06-641 and Canter No. HID 2227. It has also been mentioned in Ex.PB that vehicle HID-2227 was being driven by Gurdev and vehicle No. HP-06-641 was being driven by Bhagat Ram. In the same manner names of owners of both the trucks are mentioned in the report Ex. PB. Ex.PD is the post-mortem report of Ram Bahadur in which it has been recorded that as per information furnished by police the death occurred due to injuries sustained in truck, accident etc. The age of the deceased was given 20 years and as per opinion of the doctor death occurred due to cardio-respiratory failure caused by septicemia. The injuries described in post-mortem were ante-mortem. In the cancellation report Ex.R-4, it has been specifically stated that the cleaner of truck No. HID-2227 Ram Bahadur had sustained serious injuries. This cancellation report is regarding FIR No. 95/95 dated 19.8.1995, Police Station, Parwanoo regarding truck No. HP-06-641 and truck No. HID-2227. The learned Counsel for the appellant has submitted that these documents cannot be looked into in evidence as these have not been brought on record in accordance with law. Ms. Sunita Sharma, learned Counsel for respondents No. 1 to 5 has submitted that strict compliance of CPC and other Acts in the claim proceedings under the Act is not required as held in Dalip Kumar v. Rajesh Salaam and Ors. 2004(3) Cur. L.J. (HP) 390. Ex.PB was produced by PW-1 in his statement and learned Counsel for the insurer at the time of cross-examination has not challenged authenticity of Ex.PB. Ex.R-4 was produced by RW-3 Sher Singh and this witness was not cross-examined on behalf of the insurer. In these circumstances, documents Ex.PB and Ex.R-4 were brought on record without challenge from the insurer, therefore, now in appeal it is too late for the insurer to challenge these documents. On the basis of Ex.PB, Ex.R-4 and Ex. PD post-mortem report, it can be safely inferred that Ram Bahadur died as a result of injuries sustained by him in the accident involving truck No. HP-06641 and truck No. HID-2227.

15. There is no evidence on record to show that the claim petition has been filed by respondents No. 1 to 5 in collusion with other respondents. The learned Tribunal has rightly come to the conclusion that accident took place due to rash and negligent driving on the part of the driver who was driving truck No. HP-06-641 at the time of the accident and Ram Bahadur died on 26.2.1996 on account of injuries sustained by him in the accident on 19.8.1995. There is no denial of the fact that the truck No. HP-06-641 on 19.8.1995 was insured with the insurer.

16. The learned Counsel for the insurer has submitted that excess compensation

has been awarded to respondents No. 1 to 5. There is no legal proof of the income of the deceased. It has come in the statement of PW-1 that deceased Ram Bahadur was working on the truck. In cancellation report Ex. R-4 it has also come that Ram Bahadur was working as a cleaner on truck No. HID-2227. The learned Tribunal has taken the dependency of the claimants at Rs. 1,500/- per month and keeping in view of the age of the deceased, who was about 20 years at the time of death, the learned Tribunal has applied multiplier of 16, therefore, no fault can be found with the dependency and the multiplier applied by learned Tribunal for assessing the compensation. The learned Tribunal has awarded compensation under other heads such as loss of consortium, loss due to suffering, conventional amount, conveyance charges and funeral charges. No amount on account of medical expenses has been awarded. The deceased remained under treatment from 19.8.1995 to 26.2.1996 for more than six months. It can be safely inferred that during this period some amount must have been spent on his treatment. The claim under the Act to some extent, keeping in view the facts and circumstances of the case, can be allowed on conjectures also. In my view total compensation awarded to the claimants by learned Tribunal in the facts of the case is reasonable and not excessive.

The truck No. HP-06-641 was insured with the appellant-insurer, therefore, learned Tribunal has rightly directed that the entire amount of compensation shall be paid by the insurer to the claimants. The interest awarded by the learned Tribunal is conditional which is not permissible in law. The claimants are entitled to the interest on the award amount at the rate of 9% per annum from the date of petition till realization of the amount. The appellant has failed to make out any case for interference.

17. No other point was urged.

18. The result of the above discussion, the appeal fails and is accordingly dismissed. It is made clear that the claimants- respondents 1 to 5 shall be entitled to interest on the award amount as observed above which shall be paid by appellant-insurer.