
(2009) 04 SHI CK 0060
In the High Court Of Himachal Pradesh

New India Assurance Company	Vs	APPELLANT
Smt. Chanan Kaur and Others		RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) 3 ShimLC 401 : (2011) 2 TAC 694

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal u/s 173 of the Motor Vehicles Act is directed against the award dated 4.6.2005 passed by the learned Motor Accident Claims Tribunal-I, Sirmaur District at Nahan (hereinafter referred to as "the Tribunal), in MAC Petition No. 58- MAC/2 of 2004 whereby the learned Tribunal has awarded compensation of Rs. 3,10,000/- in favour of the claimants alongwith interest at the rate of 9 per cent per annum from the date of filing of the claim petition till the date of deposit and has further held that the appellant-Insurance Company is liable to pay the said compensation.

2. The facts, in brief, are that the respondents No. 1 to 5 (hereinafter referred to as the "claimants") are the widow, three major sons and one married daughter of late Shri Wazir Singh. They filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") claiming compensation for the death of Shri Wazir Singh. It was alleged in the claim petition that on 12.3.2004 at about 7.00 p.m., deceased Wazir Singh after purchasing articles for his shop at Badripur was returning to his village Kishankot, Tehsil Poanta on a scooter bearing Registration No. HP-17-2836. When he reached village Gondpur, a truck bearing No. HR-46- 6288 came from opposite side. It was being driven in a rash and negligent manner by the driver. The truck hit the scooter and Shri Wazir Singh fell on the road and his head came under the rear tyre of the truck. His head was crushed and even the brain of the deceased came out of the skull and

was splattered on the road.

3. According to the claimants, the deceased was a pensioner. It was alleged that in addition to his pension, he was running a Karyana shop and also doing the agricultural work and his total income was stated to be Rs. 8653/-. The deceased was aged 67/68 years at the time of the accident. According to the petitioner, FIR No. 116 of 2004 was registered against respondent No. 2, driver of the truck called Kala, resident of Village Gondpur, Tehsil Poanta. However, in the title of the petition, it was mentioned that the name of the driver as well as the Insurance Company is to be disclosed by Shri Soni Kumar, owner of the truck. Soni Kumar filed a reply stating that no accident had taken place with his truck. He also averred that his truck was insured with the New India Assurance Company. After the owner gave the details of respondents No. 2 and 3, an amended memo of parties was filed. Thereafter, respondent No. 2 Harvinder Singh alias Kala filed a reply. In his reply, he stated that no accident of the truck had taken place. According to him, he was never engaged as driver of the said truck and he does not even know driving.

4. The Insurance Company took various pleas including the plea that the complainant had filed an FIR belatedly with the police. It also took a specific plea that the driver of the truck in question did not possess a valid and effective driving licence and, therefore, it is not liable. The Insurance Company also moved an application u/s 170 of the Motor Vehicle Act alleging that respondents No. 1 and 2 are not contesting the petition and are helping the petitioners. The said application was allowed on 23.9.2004 by the learned Tribunal without giving any reason whatsoever. The parties led evidence and after the trial, the award was delivered in favour of the claimants. Hence the present appeal by the Insurance Company.

5. I have heard Shri B.M. Chauhan, learned Counsel for the appellant, Shri Bimal Gupta, learned Counsel for the claimants, Shri Deepak Kaushal, learned Counsel for the owner of the truck and Shri Sanjiv Sood, learned Counsel for the driver. Shri Bimal Gupta, learned Counsel for the claimants raised a preliminary submission about the maintainability of this appeal. He submits that the order permitting the Insurance Company to defend the case on all the grounds is a totally unreasoned order and, therefore, the Insurance Company cannot be permitted to challenge the award on the issues of negligence and quantum. A perusal of the order of the learned MACT allowing the application u/s 170 shows total non application of mind on the part of the learned Tribunal. The application has been allowed in the following terms:

Heard. Since the petition is said to be collusive, the application is allowed.

6. To say the least, it is expected that a Tribunal should give some reasons before allowing such an application. However, once this application was allowed and this order was not challenged by any party, the Insurance Company cannot be denied the right to challenge the award on all grounds at the appellate stage.

Furthermore, if the plea of the Insurance Company that the driver did not have a valid driving licence is accepted then the owner as well as the driver can urge that the finding on the issues of negligence and quantum are incorrect. Therefore, I have heard arguments on all aspects.

Negligence

7. There is no eye witness to the accident. The FIR in question Ext.PW-1/A has been proved by PW/1. A perusal of this FIR shows that it is recorded at the instance of one Shri Surjit Singh. He, in his statement, recorded u/s 154, Cr.PC has stated that he is the Up Pardhan of the area. On 12.3.2004 at about 7.20 p.m. when he was standing on the side of the road near his house, one person informed him that somebody had met with an accident. He went to the spot and found that a scooter bearing No. HP-17-2836 had fallen down on the road and Wazir Singh was lying dead on the road. His skull had broken open and the brain had come out. The accident according to him had taken place due to the negligent driving of some unknown person. This FIR was recorded on the same day.

8. Surjit Singh was produced by respondent owner as RW-2. In his statement he states that the office of the Truck Operator Union is situated in his village Gondpur. He also states that the house of Harvinder Singh is situated at a distance of 50 metres from his house. Both the houses are on the side of the road. According to him on 12.3.2004 when he was standing on the weigh bridge near the house of the driver, Harvinder, he saw from a distance of 50 metres that some unknown truck struck the scooter driven by deceased Wazir Singh. He then telephoned the police which arrived at the spot after 15-20 minutes. According to him, he could not say which truck had hit Wazir Singh. He further states that Truck No. HR-46- 6288 was standing in the house of Balwinder Singh for the last 5-6 days. In cross-examination, he states that Harvinder Singh is also known as Kala. He denied the suggestion that Harvinder Singh has been driving trucks for the last 10-15 years. According to him, he has seen Harvinder Singh working on the truck for the last 3-4 years. He could not say whether the deceased was working as a driver or a cleaner.

9. The petitioner to prove the accident had produced Shri Ram Asra, PW/4. According to this witness, he knows Harvinder Singh for the last 8-9 years. This witness also works as a driver in the Sirmaur Truck Operation Union, Gondpur. He states that Harvinder Singh also used to work as truck driver on Truck No. HP- 46-6288 which belonged to Soni Kumar. According to him, Harvinder Singh had told him that he had committed this mistake but do not mention it to anybody else. He further states that after the accident, Harvinder took the truck to the hotel of one Joginder Singh and parked it there. He in crossexamination states that neither he had witnessed the accident nor he was present on the spot. According to him, his statement was never recorded by the police.

10. PW/5 Kashmiri Lal is also a truck driver. According to him, he saw the

accident in question. He states that he saw one scooter was coming from Badripur side and going to Rajban side. One truck came from the opposite side in a high speed. The truck was bearing No. HR-46-6288 and was being driven by respondent No. 2 Harvinder alias Kala. The truck hit the scooter and the rear tyre of the scooter went over the head of the scooter driver who died on the spot. He then went and saw that the deceased person was Wazir Singh. The police came to the spot. He further states that Harvinder had parked the truck near the electricity office in Gondpur. Then Dalbir Singh came from Badripur and told Harvinder to run away. In cross-examination, he states that as long as the police was on the spot, he remained there. However, his statement was recorded by the police more than one month later. His explanation is that he had taken his truck out of Poanta. According to him on 14.3.2004 he took the truck to Calcutta and returned after 27-28 days. He further states that when the police came on the spot, he had informed the police that the accident was caused by Harvinder Singh, driver of the truck. He states that he had not informed the police that the offending truck was parked at the hotel of Joginder Singh which was only about 250 metres away. He then volunteers that he did not state this to the police because he had left the spot. He did not even inform the relatives of the deceased about his death. He admits that his house is near the village of the deceased. In crossexamination by the driver and owner, he states that one month after the accident, he had informed the relatives of the deceased by telephone and then the police had recorded his statement.

11. RW/4 Mohan Lal is the Secretary of the Sirmaur Truck Operator Union. According to him, Truck No. HP-17-3208 which is the truck on which PW/5 Kashmiri Lal was the driver was standing in the Union on 12.3.2004 and on 14.3.2004 it was given a slip to go to Saharanpur. Thereafter, the truck was again parked in the office Union till 20.3.2004. RW/5 Harvinder Singh denies that he is a truck driver. According to him, he has no driving licence. He further states that one Raju of Jammu was the driver of the Truck No. HR-46-6288. In crossexamination, he sticks to his version that he is only a conductor. He has been confronted with the challan Ext.R/1 which bears his signature.

12. The learned Tribunal decided the issue of negligence in favour of the claimant mainly on the ground that the owner and driver of the truck have taken different stands. Whereas the owner states that Harvinder is the driver of the truck, according to Harvinder, he does not even know driving. In my opinion, the learned Tribunal totally mis-directed himself in deciding this issue. In the FIR lodged at the instance of RW/2 Surjit Singh, there is no mention about the number of the truck or of the manner in which the accident had taken place. In the FIR, Surjit Singh only states that he was informed by somebody that an accident had taken place. While appearing as PW/2 Surjit Singh gives a different version and states that he saw an unknown truck hitting the deceased. This statement of Surjit Singh cannot be believed.

13. The statement of the alleged eye witness Kashmiri Lal does not inspire

confidence at all. He has now been produced as the sole eye witness to the incident. He states that he remained at the spot as long as the police was there. At one point he also states that he informed the police that the accident had been caused by Harvinder Singh. If that was true, there was no reason why the police would not have recorded his statement immediately. When asked to explain why his statement could not be recorded and why he did not inform the police that the offending truck was parked in the hotel of Joginder Singh, he changed his stand and stated that he had already left the spot. In the same statement he is making two contradictory versions regarding his presence on the spot. Earlier he stated that he was present at the spot as long as the police was there but later resiled from his statement.

14. This witness admittedly knew the deceased and was living in an ad-joining village. He also knew the phone number of the deceased since even according to him after he came back from Calcutta, he telephonically informed the family members of the deceased that the accident had taken place. There is no explanation as to why he remained silent on the night of 12.3.2004 and on 13.3.2004. His only explanation is that he took the truck to Calcutta on 14.3.2004 and returned after 27-28 days. This statement is believed by the statement of RW/4 Mohan Lal, Secretary of the Union who clearly states that on 14.3.2004 Kashmiri Lal was given a slip to take the truck to Saharanpur and thereafter, the truck was standing in the Union till 20.3.2004. This shows that the truck had never gone to Calcutta. Kashmiri Lal never produced the log book of the truck. Other than his bald statement, there is nothing to show that he was out of Gondpur for more than a month. The statement of this witness u/s 161, Cr.PC Ex.PW1/E was recorded on 26.4.2004 about one and half month's after the accident took place. There is no explanation as to why he kept silent for more than a month.

15. No doubt the deceased died due to an accident but the petitioners-claimants have miserably failed to prove that this accident occurred with truck No. HR-46-6288 or that the truck was being driven by Harvinder Singh. The evidence discussed hereinabove clearly shows that there were no eye witnesses to the accident. Surjit Singh in the FIR had stated that he was told by some person that an accident has taken place. The name of this person was not disclosed. Ram Asra's statement that Harvinder Singh told him that he had committed a mistake is not believable. As far as PW/5 is concerned, as discussed hereinabove, it is evident that he is a procured witness and his statement cannot be relied upon at all. It is apparent that this evidence has been created after the accident took place with some unknown truck so that compensation could be claimed. This issue has to be decided against the claimants.

Quantum

16. As far as quantum is concerned, in view of the findings given hereinabove, the claimants are not entitled to any compensation. Even otherwise, I find that the compensation awarded is highly excessive. The deceased was getting

pension. He was aged about 67-68 years. The admitted fact is that the Karyana shop which according to the claimants was being run by the deceased is now being run by his sons and there is nothing on record to show that the income has been decreased. Therefore, at best the pension only could have been taken into consideration. This pension was Rs. 5153/- per month or Rs. 61,836/- per year. All the children of the deceased were grown up and were not dependent upon him. Only his widow could be said to be dependent upon him and her loss of dependency can be assessed at 50%, i.e., 30,918/- or say Rs. 31,000/- per year and if multiplier of five is applied, the compensation works out to Rs. 1,55,000/-. The widow would also be entitled to a sum of Rs. 10,000/- for loss of consortium and another sum of Rs. 10,000/- for conventional damages, funeral expenses etc. Therefore, the total compensation would have worked out to Rs. 1,75,000/- and not Rs. 3,10,000/- as assessed by the learned Tribunal.

17. Liability of the Insurance Company The finding of the learned Tribunal with regard to the driving licence to say the least is totally illogical. The learned Tribunal has held that since the Insurance Company has not led any evidence in support of its plea that the driver did not have a valid driving licence, this issue has to be decided against it. The learned Tribunal totally lost sight of the fact that this was a case where the alleged driver was stating in no uncertain terms that he was not the driver of the truck and he did not hold any licence to drive. In such an eventuality the burden was on the owner to have proved the driving licence. The onus of proof can shift from one party to the other. It is the duty of the owner especially the owner of a commercial vehicle to ensure that his truck is being driven by a duly licensed person. He should ensure that he keeps the record of the licence of his driver. Soni Kumar did not step into the witness box. His father Madan Lal stepped into the witness box as RW/3. He did not produce any authority or power of attorney on behalf of Soni Kumar. According to him, he had purchased the truck in the name of his son and used to engage the driver. This was a self-serving statement. Soni Kumar should have stepped into the witness box and stated that he was not the true owner of the truck or that business of the truck was being looked after by his father. Soni Kumar is not a minor and without examining him, the statement of his father is meaningless. Much reliance has been placed on the Challan Ext.R/1. This challan relates to truck No. HR-46- 6288 and has been filed against Harvinder Singh. This challan took place on 23.3.2004 and the accused was directed to appear before the C.J.M., Nahan on 27.3.2004. In the challan, there is a note that DL No. H5440-2003 valid upto 21.4.2006 was taken into possession. This challan never went to Court and somebody appeared before the Additional Superintendent of Police on 26.3.2004 and pleaded guilty. The person who pleaded guilty was not Harvinder Singh. Who was this person is a mystery. The details of the driving licence have been given in the challan. There is nothing which prevented the owner of the truck from giving the details of the driving licence to the insurer. The details of the driving licence on the challan are totally sketchy. No Insurance Company can verify the driving licence on the basis of these sketchy details since

the details do not give the name of the office issuing the licence. To satisfy myself, I had summoned the original record and have found that on the reverse of the challan the words "received DL" are not in the hands of Harvinder Singh. It appears that this challan is a totally manufactured document created with the sole objective of creating false evidence of a driving licence so that the liability could be fixed on the Insurance Company in the eventuality of the owner being saddled with the claim. The Insurance Company could not have been held liable since Harvinder had no driving licence even if it be assumed that he was the driver of the truck.

18. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is set aside and the claim petition is dismissed. No order as to costs.