
(2018) 10 SHI CK 0044

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 331 of 2018

**New India Assurance Company Ltd @APPELLANT@Hash Smt. Sunita Devi
& Others**

Date of Decision : 31-10-2018

Acts Referred:

Citation : (2018) 10 SHI CK 0044

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1. The Insurer of the offending vehicle, has, instituted the instant appeal before this Court, wherethrough, it, casts a challenge, upon, the award

pronounced by the learned Motor Accident Claims Tribunal(I), Mandi, H.P., upon, Claim Petition No. 25/2015, whereunder, compensation amount

comprised, in, a sum of Rs.9,35,000/- along with costs, and, interest accrued thereon, at the rate of 7.5% per annum, from, the date of petition till

realization thereof, stood, assessed, vis-a-vis, the claimant, and, the apposite indemnificatory liability thereof, was, fastened upon the insurer.

2. The learned counsel appearing for the insurer has contended with much vigour before this Court, that, the affirmative findings, as, rendered upon

issue No.1, by the learned Tribunal being amenable for interference, (a) given the learned tribunal not meteing, an, appropriate reverence to the

deposition of RW-1, who had lodged the FIR qua the occurrence, FIR whereof is embodied in Ex.PW2/A; (b) contrarily, in, the learned tribunal

assigning reverence to the deposition of PW-3, who, in his deposition, comprised in his cross-examination, has acquiesced to a suggestion of his being,

a, close friend of the deceased, whereupon, hence his deposition, is, ingrained with a vice of gross interestedness, rather has committed a gross fallacy. The afore contention reared by the learned counsel appearing for the appellant, for, reversing the findings returned by the learned tribunal upon issue No.1, would hold tenacity, (c) if upon, a, dispassionate comparative evaluation, of, the depositions respectively rendered qua the occurrence by PW-3, and, by RW-1, (d) an invincible conclusion erupts, qua the deposition of PW-3 wanting in credence, and, the, deposition of RW-1 rather warranting meteing of credence thereto.

The aforesaid fathoming, is, to be made, dehors, the acquiescence made by PW-3, an ocular witness to the occurrence, who, in his examination-in-chief, has attributed, the, role of, a, tortfeasor, to respondent No.3 herein. (e) The worth of his deposition comprised therein, would lose its tenacity, when, upon, a wholesome reading of his deposition, especially the one comprised in his examination-in-chief, unravelings rather erupt qua his being not an ocular witness to the occurrence. However, a reading of his testification, embodied in his cross-examination, unfolds, that neither any suggestion stood meted to him, by the counsel for the insurer qua his being not an ocular witness to the occurrence, nor any answer thereto stood meted by him. Consequently, the factum of his being, a, purported interested witness, arising, from his being a close friend of the deceased, cannot, render his deposition being construable to stand ripped of its probative vigour.

3. Be that as it may, RW-1 in his deposition, borne in his examination-in-chief, unfolds (i) that the offending vehicle was proceeding, from, Mandi towards Sundernagar, and, at the site of occurrence, another vehicle, of, a larger size arrived thereat, and, was proceeding from Sundernagar to Mandi; (ii) and, in simultaneity thereof, at the site of occurrence, the motorcycle driven by the deceased also arrived thereat, and, as testified by RW-1, the deceased attempted to over take the larger vehicle, proceeding from Sundernagar to Mandi. He has further testified that the (iii) driver of the offending vehicle after sighting the vehicle travelling from Sundernagar to Mandi hence applied brakes thereon, whereafter, the offending vehicle moved towards the inappropriate side of the road; (d) a further echoing also occurs in his examination-in-chief, qua, the driver of the larger vehicle also applying brakes thereon, and, thereafter, the vehicle moving outside, the

main-road onto the Katcha portion thereof, and, subsequently, the motorcycle whereon the deceased was astride, striking, the rear of the offending vehicle.

The afore deposition occurring in the examination-in-chief of RW-1, makes a clear bespeaking qua (a) that the offending vehicle moving astray from the appropriate side of the road, to the, in appropriate side of the road, (b) thereupon, it is to be concomitantly concluded, that, the motorcycle whereon the deceased was astride rather occupying the appropriate side of the road, (c) and, further sequel thereof is that the deceased in driving the motorcycle, was not rash and negligent, rather the driver of the offending vehicle being negligent in driving the latter vehicle. The effect of the aforesaid analysis of the deposition, of RW-1 rather supports the version qua the occurrence, as, spelt out by PW-3. Consequently, no leverage can be drawn by the counsel for the appellant, even if, RW-1 lodged an FIR qua the occurrence. The further effect thereof is that the affirmative findings rendered, upon, issue No.1, by the learned tribunal, are, not amenable for interference.

4. Uncontrovertedly, the offending vehicle was insured with the insurer/appellant herein. The copy of the insurance policy, is, embodied in Ex.R-1.

However, the counsel for the appellant has contended with vigour, qua, the offending vehicle being driven, in, breach of the terms and conditions of the insurance policy, (i) breach whereof, is, canvassed to arise from the factum of the driving licence held by the driver of the offending vehicle, and, as embodied in Ex.R-5, not holding authenticity, (ii) given the Ex.RC making a clear display, vis-a-vis, the Government of Nagaland, assigning validity, vis-a-vis, only those driving licences issued in smart card format, whereas, the driving licence held by the driver of the offending vehicle, not, standing borne in the smart card format, (iii) thereupon, the, meteing of reverence to the driving licence, borne in Ex.R-5, by the learned tribunal, being insagacious as well as inapt. However, the aforesaid submission cannot be accepted by this Court as there is no evidence on record (a) that the apt necessity embodied in Ex.RC, being given the largest publicity, and, its being widely circulated, for ensuring, all, the licence holders, holding licences other than in the smart card format, hence concerting, to , make the requisite conversion; (b) for want of publicity of the apposite office order, it can

be concluded that the driver of the offending vehicle, holding, no knowledge thereof, and, nor hence could make the requisite conversion, nor can he

for lack of requisite conversion, hence concluded, to be amenable, for, the drawing of an adverse inference qua his driving licence, holding,

inauthenticity and invalidity. More so, when no evidence stands adduced that the signatures of the authority concerned and the serial number

embossed thereon, being fictitious, and, unauthentic. Consequently, the meteing of reverence to the driving licence, borne in Ex.R-5, does not, suffer

from any inherent fallacy nor the fastening of the apposite indemnificatory liability, upon, the insurer, hence, can be faulted.

5. For the foregoing reasons, there is no merit in the instant appeal and it is dismissed accordingly. The impugned award is maintained and affirmed.

All pending applications also stand disposed of. Records be sent back forthwith.