

(2016) 12 SHI CK 0080

In the High Court Of Himachal Pradesh

Case No : FAO No. 407 of 2011, Cross Objection 327 of 2012

New India Insurance Company

APPELLANT

Vs

Hiravati Sharma

RESPONDENT

Date of Decision : 26-12-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, Section 173

Citation : (2017) 1 ACC 146

Hon'ble Judges : Chander Bhusan Barowalia, J.

Bench : Single Bench

Advocate : Mr. B.M. Chauhan, Advocate, for the Appellant; Mr. N.S. Shandil, Advocate, for the Respondent Nos. 1 and 2; Nemo, for the Respondents No. 3

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J. - The present appeal under Section 173 of the Motor Vehicles Act, 1994, is maintained against the award dated 26.7.2011, passed by learned Motor Accident Claims Tribunal, Shimla, in MAC Petition No. 18-S/2 of 2009, whereby the learned Tribunal below has awarded compensation of Rs. 3,00,000/- to the petitioners along with interest at the rate of 8% per annum.

2. The brief facts giving rise to the present appeal are that respondents No. 1 & 2, who are the claimants/cross objectors in present the appeal (hereinafter referred to as the "petitioner") maintained a petition for compensation on account of the death of their son in an accident caused due to the rash and negligent driving of respondent No. 4 (hereinafter referred to as "respondent No. 3") while driving the vehicle owned by respondent No. 3 (hereinafter referred to as "respondent No. 1") and insured by the appellant herein (hereinafter referred to as "respondent No. 2").

3. As per the petitioner, on 14.2.2009, Deepak Sharma was travelling in the vehicle i.e. Mahindra Pick Up bearing registration No. CH-23T-9715 (Engine No.

21794 and Chassis No. 41974), as owner of goods was going from Koti to Dhalli and thereafter to Kotkhai, when the vehicle reached near Karyalghati, it met with an accident and the vehicle went down the highway. Deepak Sharma, received grievous injuries and died at the spot. The accident has taken place due to the rash and negligent driving of the driver of vehicle. After the death of Deepak Sharma, the petitioners had been left high and dry. The petitioners had claimed compensation of Rs. 5,00,000/-, on account of the death of their son. Respondent No. 1 was registered owner of Mahindra Pick Up bearing No. CH-23T-9715. Respondent No. 1 was vicariously liable for rash and negligent act of his driver. Respondent No. 2 had provided comprehensive insurance cover to the vehicle for the period from 31.8.2008 to 30.8.2009. The respondent No. 2 was liable to indemnify the insured.

4. Respondent No. 1 had resisted and contested the claim petition. He had admitted his ownership and possession of vehicle bearing No. CH-23T-9715. Respondent No. 1 had purchased the vehicle from registered dealer at Chandigarh on 31.8.2008. Respondent No. 2 had provided comprehensive insurance cover to the vehicle. On 14.2.2009, respondent No. 3 had been on the wheel of the vehicle. Respondent No. 3 had been taking Deepak Sharma and his goods to Kotkhai. The charge of rash and negligent driving against the driver had been denied. The accident had taken place due to sudden mechanical brake down of the vehicle. Respondent No. 1 had expressed ignorance about the age, income and occupation of the deceased. The petitioners were not dependent for maintenance on their son. They were not entitled to compensation from respondent No. 1.

5. Respondent No. 2 had also resisted and contested the claim petition. It had admitted having provided insurance cover to vehicle bearing No. CH-23T-9715 at the time of accident. Further alleged that respondent No. 1 had contravened the terms and conditions of the insurance policy. Respondent No. 3 had not been in possession of a valid and effective driving licence. Deepak Sharma had been travelling in the vehicle as gratuitous passenger. Risk of carriage of gratuitous passenger had not been covered by the insurance policy provided by respondent No. 2. It is alleged that respondent No. 1 was required to get the vehicle registered within one month of sale thereof. Temporary registration No. CH-23T-9715 could not be treated valid at the time of accident. The petitioners were parents of respondent No. 3. The deceased had not been in receipt of income of Rs. 5000/- per month. Respondent No. 2 was not liable to pay compensation to the petitioners.

6. The learned Tribunal below framed the following issues :

"1. Whether Sh. Deepak Sharma died due to rash and negligent driving of Mahindra Pick Up bearing temporary No. CH-23T-9715 by respondent No. 3 ? OPP.

2. In case No. (i) is proved in affirmative, to what amount of compensation, the petitioners are entitled to and from whom ? OPP.

3. Whether Sh. Deepak Sharma was travelling in vehicle in question at the time of accident as an unauthorized or gratuitous passenger ? OPR.

4. Whether the vehicle in question was being driven in contravention of terms and conditions of the insurance policy ? OPR-2.

5. Whether the respondent No. 3 was not holding valid and effective driving licence at the time of accident ? OPR- 2.

6. Whether the petition is result of collusion between the petitioners and respondent No. 1 and 3 ? OPR-2.

7. Relief."

7. After deciding Issue Nos. 1 & 2 in favour of the petitioners, Issue Nos. 3 to 6 against the respondents, the learned Tribunal below awarded an amount of Rs. 3,00,000/- to the petitioner and against the respondents, as the vehicle was insured by respondent No. 2, the liability was to be fixed by respondent No. 2 to pay the amount of compensation. The petitioner who is respondent No. 1 in the present case has also maintained cross objections under Order 41, Rule 22 CPC, for enhancement of the compensation. These cross objections are also dealt with the present appeal.

8. Learned counsel appearing on behalf of the appellant has argued that the learned Tribunal below has not taken into consideration the fact that the deceased was gratuitous passenger and so, the Insurance Company was having no liability. On the other hand, learned counsel appearing on behalf of the petitioner, who are the respondents in the present appeal and who maintained cross objections has argued that the deceased was owner of the goods, as he was carrying the manure in his vehicle for selling to the owners of the apples orchard, which is generally business of the people in the area from where the deceased belongs. He has further argued that the amount of compensation as awarded by the learned Tribunal below is too much on the lower side and requires to be enhanced.

9. In rebuttal, learned counsel appearing on behalf of the appellant has argued that the amount of compensation as awarded by the learned Tribunal below is already on the excessive side and the question of enhancement does not arise. He has further reiterated that as the deceased was gratuitous passenger, no amount is required to be paid by the Insurance Company, as the vehicle was plied in violation of the terms and conditions of the Insurance Policy.

10. To appreciate the arguments of learned counsel appearing on behalf of the parties, I have gone through the record of the case carefully.

11. PW-1 Head Constable Prem Chand, had tendered in evidence copy of FIR No. 29/09 under Sections 279 and 304-A of the Indian Penal Code, Police Station, Dhalli, Ex.PW1/A. Respondent No. 3 had been booked on charges of rash and negligent driving by the local police. PW-2 Krishan Dutt, has deposed that his son

Deepak Sharma had been looking after his household and property. Petitioner No. 2 had been owner-in-possession of property, as per jamabandi Ex.PW2/A. Deepak Sharma, had been cultivating vegetables and had been earning Rs. 5000/- per month from all sources. On 14.2.2009, Deepak Sharma, had been carrying his goods to Kotkhai and had boarded the vehicle of respondent No. 1. The driver had been driving the vehicle rashly and negligently, as a result of which vehicle had gone down the highway in the area of Karyalghati. Deepak Sharma had suffered fatal injuries in the accident. After the death of their son, the petitioners had been left high and dry. Ex.PW2/B was death certificate of Deepak Sharma, Ex.PW2/C, postmortem report of the dead body of Deepak Sharma. The date of birth of Deepak Sharma was 2.8.1989. Deepak Sharma had left the School from 8th standard. The petitioners were from B.P.L family and Ex.PW4/A was BPL card of the petitioners. along with while appearing as PW-3 has stated that on 15.2.2009, he had been on way from his house to Shimla. When PW-3 had been passing through Karyalghati, he had noticed marks of the accident. PW-3 had stopped and found one vehicle having gone down the highway. PW-3 had found the dead body of Deepak Sharma, at some distance from the vehicle. The respondent examined Sanjay Sharma as RW-1, who has stated that on 14.2.2009, he had been on the wheel of the vehicle. Deepak Sharma had boarded the vehicle along with his goods for Kotkhai. When the vehicle was in the area of Karyalghati, shaft of the vehicle had suddenly broken down. The vehicle had gone down the highway. Deepak Sharma had suffered fatal injuries, but there is no proof of mechanical defect as stated by RW-1. He was interested person to say so and the learned tribunal below has rightly held that the accident has occurred due to rash and negligent driving of respondent No. 1, who is driving the vehicle and appeared before the learned tribunal below as RW-1. RW-2 Lokeshwar Dutt, who has stated having purchased the vehicle from registered dealer at Chandigarh on 31.8.2008. The dealer had got the vehicle insured, as per the insurance policy, Ex.PW2/B. Respondent No. 1 had produced the driving licence of respondent No. 3. The accident had taken place on 14.2.2009 at about 9:30 PM. So, the learned Tribunal below has rightly held that the accident has occurred due to the rash and negligent driving of the driver of the vehicle. As far as the status of the deceased was concerned, it has come on record that he was owner of the goods. Further, the Insurance Company has charged the premium for two workmen also. It has also come on record that the manure belongs to the deceased. The Insurance Company cannot escape his liability for the owner of the goods. In this case, the Insurance Company has already charged premium for two workmen also. As far as the compensation amount is concerned, the learned tribunal below has rightly taken the income of the petitioner at the rate of Rs. 3500/- per month, as there was no specific proof with regard to his income as alleged by the petitioners. I find no illegality in the compensation as worked out by the learned tribunal below.

12. The net result of the above discussion is that the findings arrived at by the learned Tribunal below holding that the Insurance Company is liable, needs no

interference, as the same are just, reasoned and after appreciating the fact, which has come on record, to its true perspective. Further, this Court finds that there is no infirmity and perversity with the impugned award passed by the learned Tribunal below awarding Rs. 3,00,000/-, to the petitioner, as the learned Tribunal below has taken into consideration the income of the deceased earning about Rs. 3500/- per month. No other points argued needs no consideration.

13. With these observations, the appeal as well cross objections requires dismissal and accordingly dismissed. Pending application (s), if any, shall also stands disposed of. No order as to costs.