(1990) 03 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No. 123 of 1983

Oriental Fire and Genl. Ins. Co. Ltd. — APPELLANT

Vs

Naresh and Others — RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:
Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1990) ACJ 1085 : (1990) 2 ShimLC 65

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; G.D. Verma, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, J.—In an accident which took place on May 21, 1973 at about 9.45 p.m., one Rattan Dass lost his life. It is said that he was struck by a truck bearing registration No. HIL 518. The minor children of the deceased logded a claim under the provisions of the Motor Vehicles Act, 1939. It was registered as MAC. No. 12-S/2 of 1977 and tried by the Motor Accidents Claims Tribunal, Shimla. Vide its award dated December 24, 1982, the Tribunal, after coming to the conclusion that the accident had taken place on account of the negligence of the driver of the truck, awarded a sum of Rs. 23,000/- as compensation to the minor claimants. It also held that the claimants would be entitled to interest on the awarded amount at the rate of 9 per cent from the date of petition till the date of payment. The claim of the mother of these minor children, namely, the widow of Rattam Dass was held barred by limitation and, therefore, negatived.

2. The truck had been insured with the Oriental Fire and General Insurance Co. Ltd. The present appeal has been filed by the insurance company. In this appeal, the insurance company has assailed the finding of the Tribunal both on the question of negligence as also the quantum of compensation to which the minor claimants were entitled.

3. Section 96 of the Motor Vehicles Act, 1939, provided for the duty of the insurers to satisfy judgments against persons insured in respect of third party risks. By Sub-section (6) of this section, a limited right of challenge was given to the insurer. Sub-section (6) was in these terms:

(6) No insurer to whom the notice referred to in Sub-section (2) or Sub-section (2-A) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in Sub-section (1) or Sub-section (2-A) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

If one looks at Sub-section (2) of Section 96, one finds it provided that there were some limited grounds available to the insurer to defend the action where it was required to appear in the proceedings by a notice before or after the commencement of the proceedings in which the judgment is given. It was not open to the insurance company to take any defence other than that contemplated by Sub-section (2) of Section 96. It is not necessary to reproduce the provisions of Sub-section (2). Suffice it to say that the defence relating to the question of negligence as also to the question of the quantum of compensation was not open to the insurer.

4. In view of the statutory provisions aforesaid, the present appeal, in which challenge has been confined to the determination of the question of negligence on the part of the insured and to the quantum of compensation to which the minor claimants were entitled, must be held to be incompetent. The view in this respect is shared by many courts in the country. Reference may be made only to some decisions in this regard. [See: New India Assurance Co. Ltd. Vs. Saira and Others, , National Insurance Company Vs. Kastoori Devi and Others and Shanti Devi and Others, and Sushila and Others Vs. Succha Singh and Others Observations made by a learned single Judge of this court in The Oriental Fire and General Insurance Co. Ltd. Vs. Mast Ram and Others, also lends support to the view taken by me.

5. In conclusion, the appeal shall stand dismissed as not maintainable on the grounds raised therein. The parties are left to bear their own costs in this court.

