(2016) 08 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No. 362 of 2011

Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Sartabi RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166, 3

Citation : (2016) AAC 2147 : (2017) 2 ALLMR 30

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Deepak Bhasin, Advocate, for the Appellants; Mr. Tek Chand Sharma, Advocate, for the Respondents No. 1 to 3; M/s Dinesh Kumar and Y. Paul, Advocates, for the Respondents No. 4

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J. (Oral)—This appeal is directed against the judgment and award dated 8.6.2011, made by the Motor Accident Claims Tribunal Kinnaur Civil Division, at Rampur Bushahr, in MAC Petition No. 66 of 2007, titled Smt. Sartabi and others v. Sh. Bal Raj and another, for short "the Tribunal", whereby compensation to the tune of Rs. 5,00,200/- along with interest @7.5% came to be awarded in favour of the claimants and insurer was saddled with the liability with right of recovery from the owner/insured, hereinafter referred to as "the impugned award", for short.

2. Claimants and insured-cum-driver have not questioned the impugned award on any ground. Thus, it has attained the finality so far as it relates to them.

3. The learned counsel for the insurer at the outset argued that the claimant namely, Smt. Sartabi respondent No. 1 herein was the wife of Rama Nand and also the wife of deceased Maidub which is not legally permissible. She has no right, locus or cause to file claim petition and claim compensation. Learned counsel for the insurer has not questioned the locus standi of other two

claimants, namely Pushap Lata and Hem Lata, respondents No. 2 and 3 herein, who are daughters of Maidub deceased. He also argued that the deceased was a gratuitous passenger, the driver was not having a valid and effective driving licence to drive the offending vehicle and the insured has committed wilful breach. Thus, the insurer was not to be saddled with the liability.

4. In order to determine the said issues, it is necessary to give a flash back of the relevant facts, the womb of which has given birth to the instant appeal.

5. The claimants being the victims of a vehicular accident has filed claim petition before the Tribunal for the grant of compensation to the tune of Rs. 8,00,000/-, as per the break-ups given in the claim petition. It is specifically averred that Bal Raj respondent No.1, in the claim petition had driven the offending vehicle i.e. applied for Tata Sumo rashly and negligently at about 7 P.M. near Janakpuri, due to which the vehicle went off the road in which deceased Maidub 25 years of age sustained the injuries and succumbed to the injuries on the spot. FIR was lodged in police station Bhabanagar. It is averred that as per the custom prevailing in Kinnaur known as "Kinauri custom", a woman can marry two real brothers at the same time or can be wife of two brothers. It is stated that the claimants have lost source of dependency being widow and minor daughters of deceased Maidub.

6. The claim petition was resisted and contested by the respondents and following issues came to be framed by the Tribunal.

"(i) Whether on 18.4.2007, at about 7 P.M. near village Janakpuri Sh. Maidub died on account of rash and negligent driving of applied for Tata Sumo by respondent No.1 ? OPP

(ii) If issue No. 1 is proved, to what amount the petitioners are entitled to and from whom? OPP

(iii) Whether the drive of applied for Tata Sumo was not holding a valid and effective driving license at the time of the accident? OPR-2

(iv) Whether the applied for Tata Sumo was being plied without valid registration-cum-fitness certificate at the time of the accident? OPR-2.

(v) Whether the deceased was travelling in applied for Tata Sumo as gratuitous passenger? OPR- 2.

(vi) Relief."

7. Claimant has examined Bhagat Singh as PW2 and claimant Sartabi herself stepped into the witness box as PW1.

8. Respondents, on the other hand have examined three witnesses, namely Devinder Kumar, RW1, Mohinder Sharma RW2 and driver Bal Raj stepped into the witness box as RW3.

9. The claimants and respondents have also placed on record the documents, details of which are given at pages 16 and 17 of the impugned award.

10. The Tribunal, after discussing the pleadings and scanning the evidence, held that the claimants have proved issue No.1 and decided the same in favour of the claimants and against the respondents. Driver-cum-owner/ respondent No. 2 Bal Raj has not questioned the said findings. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

11. Before I deal with issue No. 2, I deem it proper to deal with issues No. 3 to 5 at the first instance.

12. It was for the insurer to lead evidence and prove that the driver was not having a valid and effective driving licence, has failed to discharge the onus. The driving licence is on record which does disclose that he was competent to driver the light motor vehicle. This Court in series of cases held that the driver in whose favour driving license LMV (Non-transport) is granted, is competent to drive all types of light motor vehicles.

13. Admittedly, the driver was driving the offending vehicle, i.e. applied for Tata Sumo, at the relevant point of time, as per the Certificate of Registration, Ext. RW-3/B, is a light motor vehicle.

14. I deem it proper to reproduce the definitions of "driving licence", "light motor vehicle", "private service vehicle" and "transport vehicle" as contained in Sections 2 (10), 2 (21), 2(35) and 2 (47), respectively, of the MV Act herein:

"2. ?.............

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class or description.

xxx xxx xxx

(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or roadroller the unladen weight of any of which, does not exceed 7,500 kilograms.

xxx xxx xxx

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi-cab, a motor cab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage , an educational institution bus or a private service vehicle."

15. Section 2 (21) of the MV Act provides that a "light motor vehicle" means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7500 kilograms. Section 2 (35) of the MV Act gives the definition of a

"public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2 (47) of the MV Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

16. Section 10 (2) (d) of the MV Act contains "light motor vehicle" and Section 10 (2) (e) of the MV Act, was substituted in terms of amendment of 1994, class of the vehicles specified in clauses (e) to (h) before amendment stands deleted and the definition of the "transport vehicle" stands inserted. So, the words "transport vehicle" used in Section 3 of the MV Act are to be read viz-a-viz other vehicles, definitions of which are given and discussed here in above.

17. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case titled as National Insurance Co. Ltd. v. Muhammad Sidiq Kuchey & ors., being LPA No. 180 of 2002, decided on 27th September, 2007, has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

"The question now arises as to whether the driver who possessed driving licence for driving above mentioned vehicles, could he drive a passenger vehicle? The answer, I find, in the judgment passed by this court in case titled National Insurance Co. Ltd. v. Irfan Sidiq Bhat, 2004 (II) SLJ 623, wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorisation of having PSV endorsement in terms of Rule 41 (a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment hereunder:-

"13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorisation in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.

?......................................

17. In the case of Mohammad Aslam Khan (CIMA no. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E"

licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle under section 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle."

In the given circumstances of the case PSV endorsement was not required at all."

18. The mandate of Sections 2 and 3 of the MV Act came up for consideration before the Apex Court in a case titled as Chairman, Rajasthan State Road Transport Corporation & ors. v. Smt. Santosh & Ors., reported in 2013 AIR SCW 2791, and after examining the various provisions of the MV Act held that Section 3 of the Act casts an obligation on the driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It is apt to reproduce paras 19 and 23 of the judgment herein:

"19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semi-trailer is attached; Section 2(34) defines public place; Section 2(44) defines ''tractor'' as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines ''trailer'' which means any vehicle, other than a semitrailer and a side-car, drawn or intended to be drawn by a motor vehicle. Section 3 of the Act provides for necessity for driving license; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving license; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax etc.

20. to 22. ....

23. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of the said Section. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are ''goods carriage'', ''heavy goods vehicle'', ''heavy passenger motor vehicle'', ''invalid carriage'', ''light motor vehicle'', ''maxi-cab'', ''medium goods vehicle'', ''medium passenger motor vehicle'', ''motor-cab'', ''motorcycle'', ''omnibus'', ''private service vehicle'', ''semi-trailer'', ''tourist vehicle'', ''tractor'',

''trailer'' and ''transport vehicle''."

19. The Apex Court in another case titled as National Insurance Company Ltd. v. Annappa Irappa Nesaria & Ors., reported in 2008 AIR SCW 906, has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of ''light motor vehicle'', ''medium goods vehicle'' and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of the judgment herein:

"8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the ''light motor vehicle'' as contained in Section 2(21) of the Motor vehicles Act, 1988 (''Act'' for short), a light goods carriage would come within the purview thereof.

A ''light goods carriage'' having not been defined in the Act, the definition of the ''light motor vehicle'' clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle.

Strong reliance has been placed in this behalf by the learned counsel in Ashok Gangadhar Maratha v. Oriental Insurance Company Ltd., [1999 (6) SCC 620].

9. to 13. ?........

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorising the same in nine types of vehicles.

Clause (e) provides for ''Transport vehicle'' which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which has been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein.

15. ?............

16. From what has been noticed hereinbefore, it is evident that ''transport vehicle'' has now been substituted for ''medium goods vehicle'' and ''heavy goods vehicle''. The light motor vehicle continued, at the relevant point of time, to cover both, ''light passenger carriage vehicle'' and ''light goods carriage vehicle''.

A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."

20. The Apex Court in the latest judgment in the case titled as Kulwant Singh & Ors. v. Oriental Insurance Company Ltd., reported in JT 2014 (12) SC 110, held that PSV endorsement is not required.

21. Having glance of the above discussion, I hold that the endorsement was not required.

22. It is apt to record herein that the learned counsel for the insurer has not seriously questioned the findings returned on issue No.3. Accordingly, the findings returned by the Tribunal on issue No. 3 are upheld.

Issue No.4.

23. Learned counsel for the insurer has not questioned the findings returned by the Tribunal on this issue, merits to be upheld. However, I have gone through the record. The insurer has failed to prove issue No. 4. Accordingly, the findings returned by the Tribunal on this issue are upheld.

Issue No.5.

24. It was for the insurer to prove that the deceased was travelling in the offending vehicle as a gratuitous passenger, has not led any evidence and has failed to discharge the onus. The learned counsel for the insurer has also not questioned the findings returned by the Tribunal on this issue, are accordingly upheld.

Issue No.2.

25. The deceased was 25 years of age at the time of accident, was a carpenter and was also performing agricultural vocations. The claimants have specifically pleaded that he was earning Rs. 8000/- per month. The Tribunal, after making guess work held that the deceased was earning Rs. 3300/- per month, deducted ? rd towards his personal expenses and held that the claimants have lost source of dependency to the tune of Rs. 2200/- per month, appears to be meager. The claimants have not questioned the same, is accordingly upheld.

26. The Tribunal has rightly applied the multiplier of "18", is just and appropriate multiplier applied. The Tribunal has awarded Rs. 25,000/- towards funeral expenses, loss of love and affection, loss of consortium and loss of estate, is meager, the same is upheld.

27. Learned counsel for the appellant seriously argued and contested the award on the ground that the claim petition, in so far it relates to claimant No.1, was not maintainable because as per law she cannot be the wife of two brothers at the same time. The said question was raised before the Tribunal and the Tribunal, after making discussion held that a custom is prevailing in Kinnaur District known as "kinnauri custom" which provides that a woman can marry two brothers or more at the same time. The claimants have also placed on record copy of Wazib-ul-Arz, which does contain the customs and that stands proved as Ext. PF. While going through the said document, one comes to an inescapable conclusion that the said custom is prevailing in Kinnaur, but it is to be pleaded and proved. It is apt to reproduce relevant portion of Wazib-ul-Arz Ext. PF, in English version, herein.

"(G) In this District, for solemnizing marriage, inheritance, and taking in adoption etc. there are its own rules and customs which are based on polygamy and joint marriage. Therefore, in the event of polygamy, if two or more brothers are having one wife in that event, the offspring shall be deemed to be of the husband who will die last????."

28. Having said so, the Tribunal has rightly held that the claim petition was maintainable on behalf of the claimants. It is worthwhile to record herein that the claimants are the dependents as averred in the claim petition. No other relatives or legal representatives related directly or remotely, have questioned the filing of the claim petition by the claimant and have not questioned her status. Thus, the insurer has no right to question the same.

29. Viewed thus, the Tribunal has rightly returned the findings on issue No.2 and also awarded a just and appropriate compensation which cannot be said to be either excessive or meager.

30. Accordingly, the impugned award is upheld and the appeal is dismissed.

31. The insurer is directed to deposit the amount, within six weeks from today before this Registry. On deposit, the entire amount be released to the claimants, strictly, in terms of the conditions contained in the impugned award, through payees? cheque account or by depositing the same in their bank accounts.

32. Send down the record forthwith, after placing a copy of this judgment.

