

(2014) 03 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 384 of 2006

Oriental Insurance Company	Vs	APPELLANT
Gulam Mohammad (since deceased) and Others		RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149 149(2) 149(2)(a)(ii) 170 173

Citation : (2014) 4 ACC 769 : (2014) ACJ 2148 : (2014) 2 AnWR 796

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.

Bench : Single Bench

Advocate : Lalit K. Sharma, for the Appellant; Arun Sehgal, Advocate, vice Mr. Jeevesh Sharma, Advocate for Respondent No. 2 and L.Rs. of Respondent No. 3 and Mr. Ajay Sharma, Advocate for Respondents No. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. The appellant has invoked the jurisdiction of this Court in terms of Section 173 of the Motor Vehicles Act (hereinafter referred to as "the M.V. Act") and has thrown challenge to the award, dated 18th July, 2006, passed by the Motor Accident Claims Tribunal-III, Kangra at Dharamshala, H.P. (hereinafter referred to as "the Tribunal") in MACP No. 40-J/2001, titled as Gulam Mohammad & others versus Raj Kamal & others, whereby Rs. 2,10,000/- came to be awarded as compensation in favour of the claimants, as per the shares apportioned in the award, alongwith interest @ 7.05% per annum from the date of the petition till its realization (hereinafter referred to as "the impugned award"), on the grounds taken in the memo of appeal.

Brief facts:

During pendency of the appeal, claimant-Gulam Mohammad, respondent No. 1, passed away and his name was deleted from the array of respondents vide order, dated 14th September, 2007, with the observations that his legal representatives

were already on record as claimants/respondents No. 2 and 3. Thereafter, claimant-respondent No. 3, Ali Din Ansari, also passed away and his legal representatives were brought on record vide order, dated 7th March, 2014, as respondents No. 3(a), 3(b) and 3(c).

2. This is how the long pendency of the claim petition as well as this appeal, which is on the Board of this Court for the last eight years, have deprived the claimants from the compensation, who are wandering and the procedural wrangles and tangles have rendered their lives miserable and have added to their sufferings which they have suffered being the victims of the vehicular accident, which was caused by respondent No. 4-Raj Kamal, driver of the offending vehicle, truck/canter bearing registration No. HP-48-0753, which he has driven rashly and negligently on 22nd October, 2000, at School Playground, Village Harnota, Tehsil Jawali, District Kangra, H.P. and hit deceased, Chanchlo Devi, who succumbed to the injuries, constraining the claimants, Gulam Mohammad, husband of the deceased (claimant No. 1), Mohammad Hussain and Ali Din Ansari, sons of the deceased (claimants No. 2 and 3) to file the claim petition before the Tribunal for grant of compensation to the tune of Rs. 10,50,000/- as per the averments contained in the claim petition read with the break-ups given in the claim petition.

3. After long drawn pendency right from the year 2001 to 2006, the Tribunal came out of deep slumber and examined the claim petition and granted compensation, that too me agree, in favour of the claimants.

4. The driver and the owner, i.e. Raj Kamal and Daljit Sharma, have not questioned the impugned award on any count, thus, has attained finality so far it relates to them. But the appellant-insurer has questioned the award on the grounds that they are not liable to pay the compensation and adequacy of compensation.

5. The claim petition was resisted by the insurer-appellant and the driver & the owner-insured, i.e. respondents No. 4 & 5, on the grounds taken in the memo of objections.

6. The following issues were framed by the Tribunal on 23rd December, 2002:

1. Whether Smt. Chanchlo Devi wife of the petitioner No. 1 and mother of petitioners No. 2 and 3 died in an accident which took place on 22.10.2000 at about 5.30 pm at Harnota when vehicle bearing registration No. HP-48-0753 owned by respondent No. 2 and driven in a rash and negligent manner by respondent No. 1 run over the deceased, as alleged?

...OPP

2. If issue No. 1 is proved in the affirmative, whether the petitioners being the L.Rs. of deceased Smt. Chanchlo Devi are entitled to claim compensation, if so to what extent and from whom?

...OPP

3. Whether the respondent No. 1 was not holding a valid and effective driving license and the vehicle was driven in violation of the terms and conditions of the insurance policy?

...OPR

4. Relief.

7. The claimants have examined witnesses and closed evidence on 23rd July, 2003. The owner and driver, i.e. respondents No. 4 and 5, have chosen to remain absent and ex-parte proceedings were drawn against them. The appellant-insurer was asked to lead evidence. An application u/s 170 of the M.V. Act for grant of leave to contest the claim petition on all grounds available to the insured and driver of the vehicle was filed by the appellant-insurer, which was granted. It examined only one witness on 4th December, 2003, and evidence of respondent No. 3 was closed.

8. The file remained on the dockets of the Tribunal right from 4th December, 2003 till 18th July, 2006, when judgment was made. This is how the Tribunals of this State are working is an eye opener for the said Tribunal.

Issue No. 1:

9. All the witnesses examined by the claimants have deposed that the driver-Raj Kamal has driven the offending vehicle, bearing registration No. HP-48-0753, rashly and negligently and has caused accident, in which deceased-Chanchlo Devi lost her life leaving behind her dependents/legal representatives, i.e. husband and sons. There is no rebuttal to the said evidence.

10. Even the appellant-insured has not led any evidence in rebuttal in order to prove that the driver has not driven the vehicle rashly and negligently and even has not disputed the said fact in the pleadings. Thus, the findings returned on issue No. 1 are upheld.

11. Before I deal with issue No. 2, I deem it proper to deal with issue No. 3.

Issue No. 3:

12. The appellant-insurer had to discharge the onus to prove issue No. 3. The appellant has only examined one witness as RW-1, who has deposed that the driver was competent to drive the Light Motor Vehicle (LMV).

13. Learned counsel for the appellant argued that the Tribunal has not appreciated the documents on the file and has wrongly made a conclusion that the offending vehicle falls within the definition of Light Motor Vehicle ("LMV"), as described in the M.V. Act. Learned counsel for the appellant further argued that the offending truck/canter does not fall within the definition of "LMV".

14. It is appropriate to reproduce Section 2(21) of the M.V. Act herein:

2.

(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 road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.

15. While going through this provision of law, one comes to inescapable conclusion that a Light Motor Vehicle (LMV) is a transport vehicle or omnibus, which includes a motor car or tractor or road roller, but the weight of the said vehicle should not exceed 7500 kilograms. Meaning thereby that the vehicle, which is falling under description of Light Motor Vehicle, its weight should not be more than 7500 kilograms.

16. The copy of the Registration Certificate of the offending vehicle is produced by the insurer and is exhibited as Ext. RX, in which the gross weight of the vehicle is given as 6000 kilograms. Thus, the said vehicle is "LMV" vehicle in terms of Section 2(21) of the M.V. Act.

17. The insurer-appellant has proved that it has issued the insurance policy for the said vehicle and has also placed on record the driving licence, Ext. RW-1/A, which also discloses that the driver was competent to drive a Light Motor Vehicle (LMV).

18. The insurer-appellant has failed to discharge its onus to prove that the driver was not having the valid driving licence. Even otherwise, it was for the insurer-appellant to plead and prove that the owner has committed willful breach and then could have sought exoneration and denied its liability.

19. My this view is fortified by the Apex Court judgment in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, It is apt to reproduce relevant portion of para 105 of the judgment hereinbelow:

105.

(i)

(ii)

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability,

must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v)

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured u/s 149(2) of the Act.

20. It is also profitable to reproduce para 10 of the latest judgment of the Apex Court in the case of Pepsu Road Transport Corporation Vs. National Insurance Company, hereinbelow:

10. In a claim for compensation, it is certainly open to the insurer u/s 149(2)(a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation.

21. Applying the ratio, the insurer has not discharged the onus, as is said above, to prove that the driver was not having valid and effective driving licence to drive the offending vehicle. The vehicle, as discussed hereinabove, is LMV and the

driver was competent to drive the LMV. Thus, the insurer has rightly been saddled with the liability. Accordingly, the findings returned on issue No. 3 are upheld.

Issue No. 2:

22. The claimants have proved that they are the legal representatives of the deceased, being husband and sons, and have lost their source of dependency. The husband had lost the matrimonial home, matrimonial life and had to live till his death lonely and had made his life miserable. The sons stood deprived from the love and affection of the mother.

23. It is that person who has lost mother, knows what is the effect of losing a mother. Neither the insurer-appellant nor the driver or the owner, including the other persons, who were associated with this lis, have taken note of the said facts. However, the Tribunal, after examining the pleadings as well as the oral evidence and the documents, held that the deceased was a house wife and assessed her income as Rs. 20,000/- per annum, is again an eye-opener for the said Judge and the Tribunal. If we will have to engage a labourer or a helper for domestic help, the minimum amount, which we will have to pay, is not less than Rs. 3,000/- per month plus food and other things. The house wife is the master and foundation of the home. She makes the home as a heaven. The minimum income of the deceased should have been taken at least at Rs. 5,000/- per month. But, unfortunately, the claimants have not questioned it.

24. The age of the deceased was taken as 70 years which is also not correct. The claimants have given her age as 64 with specific date of birth as 10th March 1936. However, in both the cases, the Tribunal has rightly applied the multiplier of 8, while keeping in mind the Schedule appended with the M.V. Act and also approved by the Apex Court in series of cases, particularly in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

25. Thus, the Tribunal has rightly held that the claimants have lost their source of dependency and entitled for compensation of Rs. 2,10,000/- with 7.05% interest from the date of filing of the petition till its realization. Therefore, the findings returned on issue No. 2 are upheld.

26. Keeping in view the long pendency of this meritless appeal, because of which the claimants have been deprived of the compensation and deprived of the fruits of the litigation for the last eight years, I deem it proper to impose costs quantified at Rs. 10,000/- as costs payable to the claimants.

27. Viewed thus, the impugned award merits to be upheld and is accordingly upheld. The appeal is dismissed with costs quantified at Rs. 10,000/- payable to the claimants. The costs be deposited within six weeks. Registry to release the awarded amount alongwith costs in favour of the claimants strictly as per the terms and conditions contained in the impugned award.

28. Send down the records after placing copy of the judgment on record.

Registry to circulate copy of this judgment to all the District and Additional District Judges in the State of Himachal Pradesh for information and compliance.