
(2015) 07 SHI CK 0094
In the High Court Of Himachal Pradesh
Case No : FAO No. 579 of 2008

Oriental Insurance Company	Vs	APPELLANT
Nitu Sharma and Others		RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Motor Vehicles Act, 1988 — Section 157, 166, 170, 94, 95

Citation : (2015) 07 SHI CK 0094

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

Bench : Single Bench

Advocate : G.C. Gupta, Senior Advocate and Meera, for the Appellant; Vijay Chaudhary, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mansoor Ahmad Mir, C.J—This appeal is directed against the award, dated 31st May, 2008, made by the Motor Accidents Claims Tribunal, Presiding Officer, Fast Track Court, Mandi, H.P. (hereinafter referred to as "the Tribunal") in Claim Petition No. 96/2002, 19/05, titled as Nitu Sharma & others versus Oriental Insurance Company & others, whereby compensation to the tune of Rs. 9,89,200/- with interest @ 7.5% per annum from the date of the claim petition till its realization, came to be awarded in favour of the claimants-respondents No. 1 to 4, herein and the insurer-appellant herein, was saddled with liability (for short, the "impugned award").

2. The claimants, owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far as it relates to them.

3. Learned Senior Counsel appearing on behalf of the appellant argued that the Tribunal has fallen in an error in dismissed two applications, i.e. one, moved under Order 6 Rule 17 of the Code of Civil Procedure and another, under Section 170 of the Motor Vehicles Act. He further argued that the award amount is excessive.

4. In order to return findings on these issues, it is necessary to give a brief summary of the case, the womb of which has given birth to the present appeal.

5. The claimants being victims of the motor vehicular accident, had invoked the jurisdiction of the Tribunal, in terms of the mandate of Section 166 of the Motor Vehicles Act, 1988, for short "the Act", for grant of compensation to the tune of Rs. 20,00,000/-, as per the breakups given in the claim petition, on the ground that driver, namely, Govind Ram, had driven the vehicle-Bus bearing registration No. HP-33-2986, rashly and negligently, on 23.09.2002, near Tail Control Sundernager, hit it against scooter bearing registration No. HP-31-1279 which was being driven by Kamal Kumar, as a result of which, he sustained injuries and succumbed to the injuries.

6. The claim petition was resisted by the respondents on the grounds taken in their memo of objection.

7. Following issues came to be framed by the Tribunal:

"1. Whether the deceased died as a result of rash or negligent driving of the respondent No. 3? ...OPP

2. In case Issue No. 1 is proved, to what amount the petitioners are entitled and from which of the respondents?OPP

3. Whether the respondent No. 3 was not having a valid and effective driving licence as alleged?OPR-1

4. Whether the petition is bad for non-joinder of necessary parties? ...OPR-1

5. Relief."

8. During the pendency of the claim petitions, two applications, i.e. one under Order 6 Rule 17 of the Code of Civil Procedure and another under Section 170 of the Act, were filed by the insurer before the Tribunal, as discussed hereinabove.

9. The claimants have led evidence which has remained unrebutted.

10. Before I deal with the issues raised by the learned Senior Advocate, I deem it proper to deal with issues No. 1, 3 and 4.

Issue No. 1.

11. There is ample evidence on the record led by the claimants to prove that on 23.09.2002, near Tail Control Sundernager, driver, namely, Govind Ram, has driven the offending vehicle, rashly and negligently, caused the accident, as a result of which deceased Kamal Kumar sustained injuries and succumbed to the injuries. Accordingly, the findings returned by the Tribunal on Issue No. 1 are upheld.

Issue No. 3.

12. Now coming to Issue No. 3, it was for the insurer to plead and prove that the

driver of the offending vehicle was not having a valid and effective driving licence at the relevant time. But it has failed to prove that the driver was not having any valid and effective driving licence at the relevant time or that the owner has committed willful breach. Issue No. 4.

13. It was for the insurer to plead and prove that the petition is bad for non-joinder of necessary parties, has not led any evidence. Accordingly, the findings returned by the Tribunal on Issue No. 4 are upheld.

Issue No. 2.

14. The two applications, as referred to above, revolve around Issue No. 2. In the application under Order 6 Rule 17 of the Code of Civil Procedure, it is averred that the offending vehicle was transferred and the insurer was not liable.

15. The transfer of the vehicle cannot be a ground to absolve the insurer from its liability in terms of the mandate of Section 157 of the Act.

16. Section 157 of the Act reads as under:

"Transfer of certificate of insurance.

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

[Explanation.-For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance."

While going through the aforesaid provision, one comes to an inescapable conclusion that transfer of a vehicle cannot absolve insurer from third party liability and the insurer has to satisfy the award.

17. The insurance policy was valid and the insurer has to satisfy the award.

18. My this view is fortified by the Apex Court Judgment in case titled as G. Govindan Vs. New India Assurance Co. Ltd. and Others, (1999) 1 ACC 483 : (1999) ACJ 781 : AIR 1999 SC 1398 : (1999) 97 CompCas 443 : (1999) 2 CTC 473 : (1999) 2 JT 622 : (1999) 122 PLR 274 : (1999) 2 SCALE 491 : (1999) 3 SCC 754 : (1999) 2 SCR 476 : (1999) 2 UJ 1121 : (1999) AIRSCW 1077 :

(1999) 3 Supreme 506 . It is apt to reproduce paras-10, 13 & 15 of the aforesaid judgment herein:

"10. This Court in the said judgment held that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard to third party. This Court also recognised the view taken in the separate judgment in Kondaiah's case that the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.

11.

12.

13. In our opinion that both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.

14.

15. As between the two conflicting views of the Full Bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Kondaiah's case (AIR 1986 Andh Pra 62) as it advances the object of the Legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well-settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of Karnataka and Delhi High Courts National Insurance Co. Ltd. Vs. Mallikarjun and others, (1990) ACJ 688 : AIR 1990 Kar 166 : (1990) 3 KarLJ 154 and AIR 1989 Delhi 88) (FB) (supra) differing from Andhra Pradesh High Court is not the correct one."

19. The Apex Court in case titled as Rikhi Ram and Another Vs. Smt. Sukhrania and Others, (2003) 1 ACC 36 : (2003) ACJ 534 : AIR 2003 SC 1446 : (2003) 1 SCALE 732 : (2003) 3 SCC 97 : (2003) 1 SCR 872 : (2003) 1 UJ 526 : (2003) AIRSCW 780 : (2003) 1 Supreme 1000 held that in absence of intimation of transfer to Insurance Company, the liability of Insurance Company does not cease. It is apt to reproduce paras 5, 6 & 7 of the judgment, supra, herein:--

"5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the

subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Ss. 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."

20. The Apex Court in latest judgment titled as United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, (2006) 2 ACC 1 : (2006) ACJ 1441 : AIR 2006 SC 1576 : (2006) 131 CompCas 163 : (2006) 2 CTC 661 : (2006) 4 JT 280 : (2006) 143 PLR 297 : (2006) 4 SCALE 67 : (2006) 4 SCC 404 : (2006) AIRSCW 1822 : (2006) 3 Supreme 332 has held the same principle. It is apt to reproduce paras- 12 & 13 of the said judgment herein:

"12. In Rikhi Ram and Another Vs. Smt. Sukhrania and Others, (2003) 1 ACC 36 : (2003) ACJ 534 : AIR 2003 SC 1446 : (2003) 1 SCALE 732 : (2003) 3 SCC 97 : (2003) 1 SCR 872 : (2003) 1 UJ 526 : (2003) AIRSCW 780 : (2003) 1 Supreme 1000 a Bench of three learned Judges of this Court had occasion to consider Section 103-A of the 1939 Act. This Court reaffirmed the decision in G. Govindan case and added that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the Insurance Company, as the purpose of the legislation was to protect the rights and interests of the third party.

13. Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts before us, or the new Act applies, as far as the deceased third party was concerned, the result would not be different. Hence, the contention of the appellant on the second issue must fail, either way, making a decision on the first contention unnecessary, for deciding the second issue. However, it may be necessary to decide which Act applies for deciding the third contention. In our view, it is not the transfer of the vehicle but the accident which furnishes the cause of action for the application

before the Tribunal. Undoubtedly, the accident took place after the 1988 Act had come into force. Hence it is the 1988 Act which would govern the situation."

21. The appellant-insurer has not led any evidence before the Tribunal. Thus, filing of the said two applications was a mere formality and came to be rightly rejected.

22. The Tribunal has rightly assessed the income of the deceased and made the deductions keeping in view the ratio laid down by the apex Court in Sarla Verma's case, supra.

23. The awarded amount is excessive for the following reasons.

24. Admittedly, the deceased was 32 years of age at the time of accident. The multiplier of "15" was applicable in this case, keeping in view of the Schedule appended to the Act and the ratio laid down by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 read with Reshma Kumari and Others Vs. Madan Mohan and Another, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 . But, the Tribunal has fallen in an error in applying the multiplier of "17". Accordingly, it is held that claimants are entitled to compensation to the tune of Rs. $4800 \times 12 = 57,600/-$ x 15 = Rs. 8,64,000/- under the head "loss of dependency".

25. The claimants are also held entitled to Rs. 10,000/- under the head "loss of love and affection", Rs. 10,000/- under the head "funeral expenses", Rs. 10,000/- under the head "loss of consortium" and Rs. 10,000/- under the head "loss of estate".

26. Having said so, the claimants are held entitled to compensation to the tune of Rs. 8,64,000/- + 10,000/- + 10,000/- + 10,000/- + 10,000/-, total amounting to Rs. 9,04,000/- with interest @ 7.5% per annum.

27. Accordingly, the impugned award is modified to the above extent and the appeal is disposed of.

28. The Registry is directed to release the awarded amount in favour of the claimant, strictly as per the terms and conditions contained in the impugned award and the excessive amount be refunded to the insurer through payees' account cheque.

29. Send down the records after placing a copy of the judgment on the Tribunal's file.