
(2014) 03 SHI CK 0047
In the High Court Of Himachal Pradesh
Case No : FAO No. 172 of 2006

Oriental Insurance Company	Vs	APPELLANT
Smt. Shakuntla Devi and Others		RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 14 149 149(2) 149(2)(a)(ii) 170

Citation : (2014) ACJ 2092 : (2015) 2 AnWR 36

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

Bench : Single Bench

Advocate : G.C. Gupta and Mr. Jagan Nath, for the Appellant; H.S. Rawat, Advocate for Respondent Nos. 1 to 4 and Mr. Neel Kamal Sood, Advocate for Respondent Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. Subject matter of the appeal in hand is the award, dated 31st March, 2006, passed by the Motor Accident Claims Tribunal-II (Presiding Officer, Fast Track Court), Hamirpur, H.P. (hereinafter referred to as "the Tribunal") in MAC Petition No. 32 of 2005/29 of 2005, titled as Smt. Shakuntla Devi & others versus Shri Mahesh Kaushal & others, whereby compensation to the tune of Rs. 16,62,564/- was granted in favour of the claimants-respondents No. 1 to 4 and against the appellant, as per the shares apportioned in the award, alongwith interest @ 6% 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:

It is profitable to give a flashback of the case the womb of which has given birth to the appeal in hand.

2. Babu Ram, s/o. Shri Jeet Ram became the victim of a vehicular accident at

Mehatpur while he was going on his motor cycle from Sarkaghat to Nangal with one Shri Kamal Dev, which was caused by the driver, namely Shri Mahesh Kaushal, while driving the offending vehicle-bus bearing registration No. HP-20C-8465 rashly and negligently on 16th March, 2005. The offending vehicle hit the motor cycle and crushed the deceased. A report was lodged with the police and FIR, Ext. PW-3/A, was registered. Investigation was conducted and the challan/final report was presented against the accused-respondent No. 5, Shri Mahesh Kaushal.

3. Claimants-respondents No. 1 to 4, who were the dependents of the deceased-Babu Ram, have been deprived of their source of dependency by the unfortunate accident, became hapless and helpless, constrained them to file the claim petition before the Tribunal for grant of compensation to the tune of Rs. 25 lacs as per the averments contained in the claim petition read with the break-ups given in the claim petition.

4. The appellant-insurer, driver and the owner-insured, i.e. respondents No. 5 and 6, appeared before the Tribunal and contested the claim petition on the grounds taken in the memo of objections.

5. The following issues were framed by the Tribunal on 8th December, 2005:

1. Whether the respondent No. 1 was driving Bus No. HP-20C-8465 rashly and negligently on the public road at Mehatpur and caused death of the deceased Babu Ram by crushing his head on 16.3.2005?...OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled to compensation? If so, to what amount and from whom?...OPP

3. Whether the deceased was driving his bike with over speed on wrong direction and committed the accident because of his own wrong, as alleged? If so, its effects?...OPR-1 & 2

4. Whether the petitioners have no locus-standi to file the petition, as alleged?...OPR-3

5. Whether respondent No. 1 was not having valid and effective driving licence to drive the bus, as alleged? If so, its effect?...OPR-3

6. Relief.

6. Claimants-respondents No. 1 to 4 have examined six witnesses and also have placed on record certain documents, which came to be proved and exhibited as Ext. PW-2/A, Ext. PW-3/A, Ext. PW-5/A, Mark-A and Mark-B. The evidence of the claimants was closed and the appellant-insurer and the owner-insured, i.e. respondent No. 6, have not led any evidence either in support of their case or in rebuttal. The driver-respondent No. 5 has not led any evidence but has appeared as a witness and tendered his own statement. He has also placed on record the photo copy of his driving licence, Ext. RW-1/A. The evidence led by the claimants has remained unrebutted on all counts.

7. The Tribunal, after examining the pleadings and after scanning the evidence on record, held that the claimants have proved that the driver-respondent No. 5 had driven the offending bus rashly and negligently on 16th March, 2005 at Mehatpur and hit the motor cycle, on which the deceased was riding, was crushed and succumbed to the injuries. The Tribunal held that the respondents have failed to prove issues No. 3 to 5 and decided the same against them. Issues No. 1 and 2 were decided in favour of the claimants and, after applying multiplier method, held that the claimants are entitled to compensation and insurer-appellant was saddled with the liability.

8. The owner-insured and the driver have not questioned the impugned award. Thus, it has attained finality so far as it relates to them.

9. The appellant-insurer has questioned the impugned award on various grounds taken in the memo of appeal. The grounds of attack taken in the memo of appeal are given in grounds (A) to (F).

10. While going through the grounds taken in memo of appeal, the star ground, which appears to be ground of attack, is that the driver was not having licence to drive the particular kind of vehicle. The appellant has also stated in the memo of appeal that the compensation awarded is at higher side and accident was the outcome of contributory negligence, i.e. collision between the motor cycle and the offending bus.

11. Learned counsel for the appellant, while addressing the arguments, argued that the driver was not having the valid licence. According to him, the licence was issued for a period of eight years in favour of the driver, which is not in accordance with Section 14 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act"), thus, was not valid licence.

12. In support of his arguments, learned counsel for the appellant has relied upon the judgment made by this Court in the case titled as Smt. Rajo Devi Vs. Kailash Giri Bus Service Society and Others, He has also relied upon the judgments of the Apex Court in the cases titled as New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another, United India Insurance Co. Ltd. Vs. Davinder Singh, and Oriental Insurance Co. Ltd. Vs. Angad Kol and Others,

13. Learned counsel for the appellant has not argued on the lines that the driver was not having the licence to drive a particular kind of vehicle, the defence which the Insurance Company has taken in the memo of appeal and also in the memo of objections filed before the Tribunal. The learned counsel for the appellant has argued beyond his pleadings.

14. Before I deal with the arguments advanced by the learned counsel for the appellant, I deem it proper to discuss the findings issue wise.

Issue No. 1:

15. Admittedly, the appellant has not led any evidence in rebuttal. The claimants

have proved by leading oral as well as documentary evidence that the offending vehicle-bus was driven by the driver rashly and negligently, hit the motor cycle, caused the accident, crushed the deceased, who succumbed to the injuries.

16. The only evidence on the file is of the driver-respondent No. 5, namely Shri Mahesh Kaushal, who has stated that he had not struck the motor cycle of the deceased but the motor cycle struck with a small bridge as a result of which the deceased fell down and died. It is contrary to the pleadings, i.e. the objections filed by him, wherein it is pleaded that the motor cycle struck with the bus. The only witness, i.e. the driver, has blown hot and cold and has tendered his statement in contradiction to the pleadings of the respondents. Thus, the pleadings and proof are at variance.

17. The argument of the learned counsel for the appellant, that the accident was the outcome of contributory negligence, is misconceived and devoid of any force. I deem it proper to mention herein that it was not the case of the appellant or of the driver or the owner, that the accident was the outcome of contributory negligence, before the Tribunal. I wonder how this ground has been taken and argued.

18. Having said so, there is ample oral as well as documentary evidence on the file, i.e. Ext. PW-2/A, Ext. PW-3/A and the statements made by the witnesses, that the driver of the offending vehicle had driven the vehicle rashly and negligently and caused the accident. Viewed thus, the findings returned on issue No. 1 are upheld.

19. Before I deal with issue No. 2, I deem it proper to discuss issues No. 3, 4 and 5.

Issue No. 3:

20. The Tribunal while deciding issue No. 1 has also decided issue No. 3. Respondents No. 1 and 2 had to discharge the onus to prove issue No. 3. They have failed to lead any evidence to prove the said issue. They have also not questioned the findings returned. Thus the findings returned on issue No. 3 have attained finality. Accordingly, findings returned by the Tribunal on issue No. 3 are upheld.

Issue No. 4:

21. Learned counsel for the appellant has not advanced any argument on this issue. The claimants, being the victims of the accident, have every right to claim compensation by the medium of claim petition. Thus, they had a locus standi to file the petition. It is not known what type of ground was taken by the appellant before the Tribunal. Accordingly, findings returned on issue No. 4 are upheld.

Issue No. 5:

22. It was for the appellant to prove that the driver was not having the valid and effective driving licence to drive the particular kind of vehicle, i.e. bus. The

appellant has not led any evidence, thus, has failed to discharge the onus. In terms of mandate of the Code of Civil Procedure, particularly, Order XIV, read with the mandate of the Indian Evidence Act, it was for the appellant to discharge the onus and prove the grounds of defence taken by the medium of the pleadings, has failed to do so, cannot argue or project that the driver was not having valid licence to drive the bus.

23. It is astonishing that learned counsel for the appellant has raised a new ground, though not taken in the memo of objections or in the memo of appeal, that the driving licence issued was for more than three years and was not licence in terms of mandate of Section 14 of the MV Act. The argument is misconceived and is not tenable rather devoid of any force.

24. It is apt to reproduce relevant portion of Section 14 of the MV Act as under:

14. Currency of licences to drive motor vehicles. - (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

[Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and]

(b)...

25. While going through this mandate of provision of law, one comes to inescapable conclusion that licence to drive a transport vehicle can be effective for a period of three years. At the cost of repetition, this is not the ground taken by the appellant. However, I deem it proper to reproduce Ex. RW-1/A hereinbelow:

26. It appears that the licence was in force w.e.f. 12th January, 1999 and was renewed from time to time. It was also renewed on 9th July, 2004 and was valid up to 5th July, 2007. Meaning thereby, it was renewed for three years at the relevant point of time. The date of accident is 16th March, 2005. At that point of time, the licence was renewed for three years, thus, was valid in terms of the mandate of Section 14 of the MV Act.

27. Learned counsel for the appellant, without going into the endorsement regarding renewal of the licence, dated 9th July, 2004, has argued that it was effective w.e.f. 12th January, 1999 and was valid up to 9th July, 2007, thus, was issued for eight years, is misconceived and devoid of any force.

28. It pains to write herein that even the learned counsel representing

respondents No. 5 and 6, the driver and the owner, has not pointed out that this licence was renewed on 9th July, 2004. Thus, the judgments cited by the learned counsel for the appellant are not, in any way, applicable and helpful to the appellant.

29. Even otherwise, if a licence was not valid or was otherwise not effective, it was for the appellant-insurer to plead and prove that the driver was not having a valid licence and the owner has committed willful breach.

30. 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.

31. 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.

32. 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-bus. Therefore, the findings returned on issue No. 5 are upheld.

Issue No. 2:

33. The appellant had filed an application u/s 170 of the MV Act for taking all defence available, which was granted, but has failed to reap the fruits for the simple reason that no evidence was led in rebuttal. However, the claimants have pleaded that the deceased was a government employee and was drawing salary of Rs. 12,813/-. They have placed on record pay certificate, Ex. PW-5/A. The Tribunal, after deducting one third, has rightly held that the claimants have lost their source of dependency to the tune of Rs. 8,542/- per month. The deceased was 38 years of age as per the matriculation certificate, Mark-B, which discloses his date of birth as 15th May, 1967. The Tribunal has rightly applied the multiplier of 16, while keeping in mind the Schedule appended with the MV 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, Thus, the compensation awarded by the Tribunal is just compensation. Accordingly, the findings returned on issue No. 2 are also upheld.

34. It is beaten law of land that awarding of compensation is just to ameliorate

the sufferings of the victims of vehicular accidents and to help the victims as early as possible, who are hapless and helpless, in order to save them from social evils, i.e. destitution and the other evils. The mystic maybes, procedural wrangles and tangles and other technicalities have no role to play.

35. While dealing with the claim petitions, it should be borne in mind and should not be forgotten that it is a social welfare legislation. The victims should not be shown door on account of hyper technicalities and niceties of law.

36. The claimants have filed the claim petition on 10th May, 2005. More than nine years have elapsed, they have yet to get compensation despite of the fact that the award was made on 31st March, 2006. Because of this meritless appeal, the claimants have been deprived of the compensation and deprived of the fruits of litigation for the last eight years. Therefore, I just deem it proper to impose costs. Though, the costs will not mitigate their sufferings, but will be an eye opener for the appellant-insurer not to file frivolous appeals and that too against facts and pleadings. Accordingly, I deem it proper to impose Rs. 10,000/- as costs payable to the claimants.

37. Having said so, the impugned award merits to be upheld and is accordingly upheld. The appeal is dismissed with costs quantified at Rs. 10,000/-. 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. Send down the records after placing copy of the judgment on record.