(2015) 05 SHI CK 0155

In the High Court Of Himachal Pradesh

Case No : FAO No. 275 of 2007

Oriental Insurance Company Limited APPELLANT

Vs

Arvind Pal and Others RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 167

Citation : (2015) 4 ACC 581

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

Bench : Single Bench

Advocate : Ashwani K. Sharma, Advocate, for the Appellant; Ramakant Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. The question involved in this appeal is--Whether the Motor Accident Claims Tribunal has rightly asked the insurer to satisfy the award. In order to settle the issue (supra), a brief reference may be made to the facts of the case, the womb of which has given birth to the present appeal.

2. It is averred that the offending truck bearing No. PAT-6462, which was being driven by the deceased Surjit Singh, rolled down the road on 3.9.2003 near village Khangral, Police Station, Kargil, Jammu and Kashmir, as a result of which the said Surjit Singh died on the spot. The Claimants (respondents Nos. 1 to 4 herein), being the dependants/legal representatives of the deceased Surjit Singh, have invoked the jurisdiction of the Motor Accident Claims Tribunal, Fast Track Court, Kangra at Dharmshala, (hereinafter referred to as the Tribunal), by the medium of Claim Petition No. 100-N/II/05/04, titled Arvind Pal and Others v. Darshna Kumari and Others, for grant of compensation to the tune of Rs. 50.00 lacs, as per the break-ups given in the Claim Petition.

3. The owner/insured and the insurer resisted the Claim Petition by filing

separate replies.

4. On the pleadings of the parties and the documents available on record, the following issues were framed by the Tribunal:

"1. Whether the deceased Surjeet Singh died during use of the vehicle and the petitioners being his dependants are entitled for compensation, if so, the amount thereof and from whom?

--OPP

2. Whether the petition is not maintainable in the present form, as alleged?

--OPR 2

3. Whether the vehicle was not insured with the respondent No. 2 if so its effect?

--OPR.

4. Whether the State of J&K is responsible for the improper and bad shape of the roads and there was cause of accident, if so, its effect thereof?

--OPR

5. Whether the vehicle was being plied in violation of the terms of the insurance policy at the time of accident, if so, its effect?

--OPR

6. Whether the deceased Surjeet Singh was not having valid and effective driving licence?

--OPR

7. Relief."

5. The Claimant Arvind Pal stepped into the wittiness box as PW-1, while the owner and the insurer have not led any evidence.

6. The Tribunal after scanning the evidence held the claimants entitled for compensation to the tune of Rs. 6,10,000 with interest at the rate of 9.5% per annum from the date of filing of the petition till final realization, vide award dated 30th April, 2007, subject matter of the present appeal, (hereinafter referred to as the impugned award).

7. The concept of granting compensation is the outcome of law of torts. Before the enactment of the provisions of the Motor Vehicles Act, (for short, M.V. Act), for grant of compensation, the claimants/victims were seeking compensation by invoking jurisdiction of Civil Courts in terms of law of torts. In order to provide compensation to the victims and to reach them as early as possible, the M.V. Act was made, which provides remedy to the claimants to seek compensation in terms of Chapters X, XI and XII, contained in the M.V. Act. The aim and object of the said legislation is to provide compensation as early as possible so that the

victims of a vehicular accident may not fall prey to social evils.

8. The Government has also provided remedy to the labourers/employees for obtaining compensation in terms of the mandate of Workmen''s Compensation Act, 1923, (for short, the Act).

9. Section 167 of the M.V. Act provides an option to the victims of a vehicular accident to seek compensation either by invoking the remedy in terms of the Act or in terms of the M.V. Act. The only difference is that if a claim is made in terms of the Act, the claimants will get the compensation as per the Schedule attached with it. However, in order to seek higher compensation, the claimants can exercise option under Section 167 of the M.V. Act.

10. This Court in FAO No. 183 of 2006, titled New India Assurance Company Limited v. Chanchal Devi and Others, decided on 14th March, 2014, and FAO No. 530 of 2009, titled Oriental Insurance Company Ltd. Vs. Kamlo--> , decided on 25th July, 2014, has laid down the same principle.

11. The claimants in the instant case, perhaps after obtaining legal advice, have invoked the jurisdiction provided under the M.V. Act, and thus, have exercised the doctrine of election by resorting to the remedy available under Section 167 read with Section 166 of the M.V. Act. The Tribunal after examining the insurance policy and the mandate of the provisions, contained in Chapters X, XI and XII, of the M.V. Act, granted the compensation.

12. According to the learned Counsel for the insurer, the compensation granted by the Tribunal is on the higher side and the insurer was liable to pay compensation only to the extent of its liability. The arguments, though attractive, are devoid of any force for the reason that the insurance policy nowhere restricts the liability of the insurer. The claimants, being the third parties, are the sufferers and have rightly invoked the jurisdiction of the Tribunal for grant of compensation and despite the fact that a meager amount of compensation has been awarded, the claimants are not able to reap the fruits of the litigation and have virtually been deprived of the benefit of social legislation, which speaks volume as to how the Insurance Companies are dragging the poor victims from pillar to post and post to pillar.

13. Having said so, I am of the considered view that the Tribunal has not fallen in error in saddling the insurer with the liability.

14. In view of the above discussion, the appeal merits to be dismissed and the same is dismissed accordingly. Consequently, the impugned award is upheld. The Registry is directed to release the award amount in favour of the claimants through payees account cheque, strictly in terms of the impugned award.