
(2016) 01 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : FAO No. 352 of 2009

Oriental Insurance Company Limited	APPELLANT
Vs	
Kaku alias Karam Singh & others	RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2016) AAC 652 : (2016) ILRHP 388

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Nipun Sharma, Advocate, Mr. Adarsh Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, CJ. (Oral)- This appeal is directed against the award dated 30th April, 2009, made by the Motor Accident Claims Tribunal, Chamba Division, Chamba, H.P. (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 41 of 2008, titled Sh. Kaku @ Karam Singh and others v. Sh. Chatro Ram and others, whereby compensation to the tune of RS. 3,57,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realisation, was awarded in favour of the claimants-respondents No. 1 to 3 herein and the insurer came to be saddled with liability (for short, "the impugned award").

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

3. Learned Counsel for the appellant-insurer argued that the Tribunal has wrongly decided issue No. 4. It is apt to reproduce issue No. 4 herein:

"Whether the deceased was traveling in the vehicle as gratuitous passenger, if so, its effect? ..OPR-3"

4. The claimants have specifically averred in the claim petition that the deceased

was traveling in the offending vehicle, i.e. Canter bearing registration No. HP-48-4267, as owner of goods. They have also examined witnesses in support of their case. Shri Kaku Ram (PW-6) has deposed before the Tribunal that the deceased was not traveling as a gratuitous passenger in the offending vehicle, but was traveling in the vehicle as owner of goods, which is not rebutted by the insurer.

5. I have gone through the claim petition and the replies. The owner and driver have admitted in their replies the claim of the claimants to the extent that the deceased was traveling in the offending vehicle as owner of goods. The claimants have also proved the said fact.

6. Having said so, I am of the considered view that the Tribunal has rightly decided issue No. 4. It is apt to reproduce para-30 of the impugned award herein:

"In support of this issue, no evidence was led by respondent No. 3 in order to show that the offending vehicle involved in the accident was being plied in contravention of the terms and conditions of the insurance policy, but it stands proved on record that the offending vehicle was covered under a valid insurance policy. In view of no such evidence on record, it can safely be concluded that the offending vehicle was being plied in contravention of the terms and conditions of the insurance policy and as such, this issue is decided against respondent No. 3."

7. Viewed thus, the impugned award is upheld and the appeal is dismissed.

8. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in their account(s).

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