

(2014) 10 SHI CK 0109
In the High Court Of Himachal Pradesh
Case No : FAO No. 202 of 2013

Oriental Insurance Company Limited	Vs	APPELLANT
Pankaj		RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Citation : (2014) 10 SHI CK 0109

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

Bench : Single Bench

Advocate : Jagdish Thakur, Advocate for the Appellant; Naveen K. Bhardwaj, Advocate and Karan Singh Kanwar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—Challenge in this appeal is to the award, dated 27th February, 2013, made by the Motor Accident Claims Tribunal, Kullu, H.P. (hereinafter referred to as "the Tribunal") in Claim Petition No. 28 of 2010, titled as Pankaj versus Navneet Thakur & another, whereby compensation to the tune of Rs. 10,56,000/- with interest at the rate of 9% from the date of filing of the petition till its realization came to be awarded in favour of the claimant-injured and against the respondents jointly and severally with a command to the appellant-insurer to satisfy the same (hereinafter referred to as "the impugned award").

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

3. The appellant-insurer has questioned the impugned award on the ground of adequacy of compensation and that the risk of the claimant-injured was not covered in terms of the insurance policy being Act Policy.

4. One of the questions to be determined in this appeal is-whether the Tribunal has rightly saddled the appellant-insurer with liability or otherwise? The answer is in affirmative for the following reason:

5. The offending vehicle, i.e. Maruti Alto, bearing registration No. HP-34 A-4561, was being driven by its driver, namely Shri Chhering Chhaspa, rashly and negligently on 2nd December, 2009 near 15 miles, caused the accident in which the claimant-injured sustained injuries and became permanent disabled. The driver of the offending vehicle also died in the accident.

6. The argument of the learned counsel for the appellant that the risk of the claimant-injured is not covered is devoid of any force for the reason that neither the appellant-insurer has taken the said ground in the memo of objections nor such issue has been framed. Even otherwise, the appellant-insurer has not led any evidence in rebuttal to prove that the risk of the claimant-injured was not covered.

7. The appellant-insurer has placed on record the insurance policy, which stood exhibited as Ext. R-3. In terms of the insurance policy, four persons have been covered, i.e. driver + three persons. Admittedly, the claimant-injured was travelling in the offending vehicle as an occupant and sustained injuries in the accident.

8. I have gone through the insurance policy, Ext. R-3. The perusal of the same do disclose that risk was covered and also premium amount has been paid for 3 + 1 persons, details of which have been given in the schedule of premium. Additional premium has been paid for the driver and the employee also. Thus, it cannot lie in the mouth of the appellant-insurer that the risk of the claimant-injured was not covered. The Tribunal has rightly discussed this issue while determining issues No. 3 and 4 in paras 29 and 30 of the impugned award.

9. I have gone through the insurance policy, which, on the face of it, covers the risk, is an eye opener for the appellant. It is apt to reproduce relevant portion of the insurance policy, Ex. R-3 herein:

"MOTOR INSURANCE CERTIFICATE CUM POLICY SCHEDULE PRIVATE CAR
LIABILITY ONLY POLICY-ZONE B

.....

LIMITS OF LIABILITY

Under Section II-1(i) in respect of any one accident: as per Motor Vehicles Act, 1988.

Under Section II-1(ii) in respect of any one claim or series of claims arising out of one event is Rs. 750000.

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LIABILITY TO THIRD PARTIES

Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's

costs and expenses which the insured shall become legally liable to pay in respect of

i) death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act."

10. The learned counsel for the appellant was asked to explain and thrash out how the insurance company is not liable, failed to do so. The recent circulars/guidelines issued by the IRDA dated 16.11.2009 and 3.12.2009 were also brought to his notice mention of which is made in National Insurance Company Ltd. Vs. Balakrishnan and Another, .

11. The Insurance Regulatory and Development Authority (IRDA) has laid down some guidelines. In terms of that guidelines, the insurer cannot resist the claim petition against the occupants of the vehicle, whose risk is covered in terms of the policy. This issue came up for consideration before the High Court of Delhi in a case titled as Yashpal Luthra and Another Vs. United India Insur. Co. Ltd. and Another, , and all these guidelines were discussed.

12. I have also discussed this issue while dealing with a case of like nature as Judge of the Jammu and Kashmir High Court at New India Assurance Co. Ltd. Vs. Shanti Bopanna and Others, , whereby award of Rs. 1,68,09,089/- with interest was made and it was held, after discussing all circulars/guidelines, effect of "Act Policy", "Comprehensive Policy" and "Package Policy", that the occupant is covered by the "Comprehensive Insurance Policy". It is apt to reproduce paras 1, 2 and 16 of the judgment herein:

"1. Does the "Comprehensive policy of insurance" exempt the Insurance Company from its liability of paying compensation to the victim of a vehicular accident who is travelling in a vehicle which is covered under such policy, at the time of accident? This is the only important point raised in the instant appeal which seeks setting aside of award dated, 26.4.2012 (for short, "the impugned award"), passed by the Motor Accidents Claims Tribunal, Samba (for short, "the Tribunal").

2. "No" is possibly the only answer for the reasons that would flow from the narration of events below."

3 to 15.....

16. Having regard to the ratio laid down by the Hon"ble Apex Court, Hon"ble High Courts of Delhi and Punjab and Haryana read with statement of the insurance official, S.K. Gupta, the appellant has rightly been saddled with the liability."

13. This Court in cases titled New India Assurance Company Ltd. versus Smt. Ritu Upadhaya and others, being FAO (MVA) No. 135 of 2011, decided on 10th January, 2014, New India Assurance Company Ltd. versus Smt. Anuradha and others, reported in Latest HLJ 2014 (HP) 1; United India Insurance Company Ltd.

versus Smt. Kulwant Kaur & another, being FAO No. 226 of 2006, decided on 28th March, 2014 and in a bunch of appeals, FAO No. 560 of 2009, titled as Oriental Insurance Company Limited versus Smt. Bantu (since deceased) and others being the lead case, decided on 22nd August, 2014, decided the same issue and has held that the insurer is liable.

14. Having said so, the argument of the learned counsel for the appellant-insurer fails and the Tribunal has rightly saddled the appellant-insurer with liability.

15. The argument of the learned counsel for the appellant-insurer that the compensation is excessive, is not tenable for the reason that the claimant-injured has become permanently disabled, his physical frame has been shattered, has lost the charm and other enjoyments of his life and has virtually become burden on his family. The compensation cannot be substitute for the enjoyment of life.

16. Keeping in view the facts and circumstances of the case, the amount awarded is inadequate, the claimant-injured has not questioned the same, thus, I deem it proper to uphold the same.

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

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