
(2009) 03 SHI CK 0007
In the High Court Of Himachal Pradesh

Oriental Insurance Company Limited

APPELLANT

Vs

Smt. Dashoda Devi and Others

RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) ACJ 2207 : (2009) 3 ShimLC 395

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—The Insurer - Oriental Insurance Company Ltd., original respondent No. 3, has filed the present appeal assailing the award dated 8.11.2004 passed by the Motor Accident Claims Tribunal-I, Solan, H.P. in Petition No. 55-S/2 of 1998, titled as Smt. Dashoda Devi and Ors. v. Smt. Kanta Devi and Ors..

2. The challenge is on the ground that while deciding Issue No. 1-A, the Tribunal failed to correctly appreciate the facts and apply the maxim actio personalis moritur cum persona. Similarly, while returning findings on Issue No. 3 the relevant provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) were misapplied and misinterpreted rendering the findings to be perverse.

3. Brief facts giving rise to the filing of the petition are as under:

4. On 10.9.1996 Shri Surjeet Singh, cleaner was travelling in Truck bearing No. HP-07-891, driven by Shri Ishwar Dutt, original respondent No. 2 and owned by Smt. Kanta Devi, original respondent No. 1. The vehicle met with an accident in which Shri Surjeet Singh sustained serious injuries. He was taken to Primary Health Centre, Sairi, Shimla where immediate medical aid was given to him and was referred to the Indira Gandhi Medical College and Hospital at Shimla. There he remained admitted for 35 days i.e. 10.9.1996 to 15.10.1996.

5. Shri Surjeet Singh filed a petition u/s 166 of the Act claiming compensation of Rs. 10 lacs. The owner, while admitting that claimant to be his employee disputed the claimant's age and negligence of the driver.

6. The Insurer, while challenging the validity of the driving licence took the plea of maintainability of the petition.

7. Based on the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the petitioner suffered injuries on account of the accident caused by the rash and negligent driving of respondent No. 2? OPP.

2. If issue No. 1 is proved, then to what amount of compensation the petitioner is entitled and from whom? OPP.

3. Whether respondent No. 2 was not possessing a valid and effective driving licence as alleged? OPR-3

4. Whether the vehicle was being driven in contravention of the Motor Vehicles Act and the insurance policy, if so, its effect? OPR-3

5. Whether the petition is collusive between the petitioner and respondents 1 and 2, if so, its effect? OPR-3

8. During trial, claimant died on 15.1.2001, however, his legal representatives, i.e., wife and two minor sons filed an application for impleadment which was allowed on 3.8.2001.

9. Based on the fresh pleadings, the Tribunal framed following additional issue:

1-A. Whether there is direct nexus between the death of Surjeet Singh and injuries received by him during the vehicular mishap in question as alleged? OPP.

10. Further opportunity to adduce evidence was afforded to the parties.

11. Appreciating the material on record the Tribunal came to the conclusion that based on the testimony of the witnesses, it was evident that the accident in question took place due to rash and negligent driving on the part of the driver Shri Ishwar Dutt. The deceased had died due to the injuries sustained by him in the accident and since there was a direct nexus between the death of the deceased and the injuries received in the said accident, the maxim, actio personalis moritur cum persona would not be applicable.

12. Taking the age of the deceased to be 34 years and his monthly income to be Rs. 2000/-, Rs. 1350/- per month was taken for the purpose of dependency and by applying a multiplier of "15", the total loss of dependency was determined at Rs. 2,43,000/-. The claimants were also awarded Rs. 5000/- as loss of consortium and funeral charges.

13. Issue No. 3 was decided by holding that the vehicle was registered with the

registering authority under the Act vide registration certificate Ext.RW-1/A and the driver was possessed with the driving licence which was evident from the report Ext.RW-2/A.

14. Issues No. 4 and 5 were decided against the Insurer as the Insurer failed to prove the same.

15. Thus a sum of Rs. 2,48,000/- was awarded in favour of the claimants and apportioned as under:-

1. Dasodha Devi, Petitioner No. 1. Rs. 1,75,000-00

2. Master Aju Rs. 36,500/-

3. Master Anil each

16. Interest @ 9% per annum was also awarded with effect from 15.1.2001 i.e. the date when Shri Surjeet Singh died.

17. I have heard the learned Counsel for the parties and also perused the record.

18. The factum of the accident, the injuries sustained by the deceased and his age is not in dispute.

19. The claimants examined the witnesses, namely, PW-1 Dr. R.S. Yadav, PW-2 Shri Sita Ram, PW-3 Shri Bhupinder Kumar, PW-4 Shri Surjeet Singh inured now deceased, PW-5 Dr. Ved Prakash, PW-6 Dr. Manish Gupta, PW-7 Smt. Dasodha Devi, PW-8 Shri Bharat Ram and PW-9 Dr. Ashok Sharma.

20. In rebuttal, the respondents examined S/Shri Hans Raj, Senior Clerk of Licensing and Registration Authority (Urban) Shimla (RW1), Vinod Kumar Verma investigator of the Insurance Company (RW-2) and Shri Rajinder Sandhu (RW-3).

21. PW-1 has categorically deposed that the deceased remained admitted in the Hospital from 10.9.1996 to 15.10.1996. He suffered fracture lumber (two) vertebra with aubluxapeion of L-one vertebra over L-2 vertebra with fracture of transverse processes of L-2 and L-3 vertebra with paraparesis. His opinion is also reiterated by Dr. Ved Parkash (PW-5) and Dr. Manish Gupta (PW-6).

22. The claimant (PW-7) categorically deposed that ever since the occurrence of the accident her husband remained on the bed and remained wholly senseless till his death. He remained in the Hospital for some time and expired due to break of spine and leg, which were due to the injuries sustained in the accident. His body had become senseless so much so that he could not get up even for his daily ablutions.

23. Dr. Ashok Sharma (PW-9), Head of Unit-III, IGMC has also deposed as under:

I have brought the requisitioned record with me. One Shri Surjit Singh was admitted in medicine unit 3 on 31.5.2002. He was discharged therefrom on 14.6.2000. He was suffering from LMN paraparesis with LMN bladder and bowel

involvement with urinary track infection. He was also having bilateral Hydro Nephrosis with bladder calculas and anemia.

The said patient was suffering from traumatic paraparesis about four years back prior to his admission as above. He was referred by me to surgery. The discharge slip the copy of which is Ext.PW-9/A has been issued by IGMCI. The injuries explained above could lead the patient to death.

24. The Court held:-

128. In Words & Phrases, Permanent Edn., Vol. 21 at p.448, "injury causing death" has been defined as under:-

If an employee but for an injury would not have died at the time at which and in the way in which he did die the accident though it merely hastened a deep-seated disorder is regarded as resulting in an "injury causing death" within the Workmen's Compensation Act.

129. "Death resulting from an injury... covers cases in which an injury aggravates or accelerates an existing condition so that death ensues earlier than it would in the ordinary course, even though the existing condition would have ultimately resulted fatally."

130. In Pigney v. Pointers Transport Services Ltd., (1952) 2 All ER 807, relying on Re: Polemis & Furnance, (1921) 3 KB 560 at 577, Lord Pilcher has said: "if death is directly traceable to the injury in the accident for which the defendants are responsible, the chain of causation is not broken."

131. In plain words, if an injury hastens or accelerates the death, directly and not remotely then in law the injury is one causing or resulting in death.

25. The Court took into account the provisions of Section 306 of the Indian Succession Act and held that if it is a case of tortious liability, it is to be found within a meaning of Section 306 of Indian Succession Act as it is the injury sustained so as to save the cause of action surviving to the legal representatives. The cause of action was found to have survived to the legal heirs and the claim was found to be maintainable.

26. Even maxim actio personalis moritur cum persona relates only to the extension of liability. In Broom's Legal Maxims, 10th Edn., (Sweet & Maxwell), it has been so observed at pages 611, 613, 615 and 622, as under:

Page:611: "2. Torts.- It is to actions in form ex delicto that the maxim actio personalis moritur cum persona, was peculiarly applicable, and, in a few cases, still applies; for, as Lord Abinger observed, this maxim "is not applied in the old authorities to causes of actions on contracts, but to those in tort, which are founded in malfeasance or misfeasance to the person or property or another : which latter are annexed to the person, and die with the person, except where the remedy is given to (or by) the personal representatives by the statute law"."

Page 613: "Accordingly, where a man sustained personal injuries through the defendants' negligence, whilst he was using a level crossing at their railway, and eventually died from such injuries, it was held that his administratrix could recover damages neither for the injuries themselves nor for the loss such injuries occasioned to him, while yet alive, through his inability to work and his need of doctors and nurses."

Page:615:"Under this Act, in every case where the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the injured person to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued is liable to an action for damages notwithstanding the death, and even though the death was caused under such circumstances as amounted in law to a felony. Such action though it must be brought, as a rule, in the name of the executor or administrator, is an action for the benefit of the wife, husband, parents and children of the deceased person : the jury being required to give such damages as they think proportioned to the injury resulting from the death to the parties respectively for whose benefit the action is brought; and the amount recovered, after deducting costs not recovered, is divisible amongst these parties in such shares as the jury by their verdict direct."

Page 622: "In conclusion, the extent and limits of the common law doctrine, *actio personalis moritur cum persona*, may be summed up thus: it was a rule of the common law that if an injury were done either to the person or property of another for which damages only could be recovered in satisfaction, the action died with the person to whom or by whom the wrong was done: but this rule was never extended to such personal actions as were founded upon any obligation, contract, debt, covenant, or any other similar duty to be performed : for there the action survived.

27. In the present case, the claimants have right in law under the Motor Vehicles Act. Hence, in my considered view, the maxim, *actio personalis moritur cum persona* does not apply at all.

28. On the issue of effective and valid driving licence, it is argued that the driver was possessed with a driving licence entitling him to drive a light motor vehicle.

29. In the present case, the vehicle in question is Swarj Mazda, which was a light motor vehicle as covered under definition Clause 2(21) of the Act, as the unladen weight of the vehicle did not exceed 7500 kgms. The Apex Court in *National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others*, , while considering the unamended conditions of the Act and the Rules framed thereunder held that a "light goods carriage" having not been defined in the Act, the definition of "light motor vehicle" clearly indicates that it takes within its umbrage both a transport vehicle and a non-transport vehicle. The Apex Court examined the provisions of Section 2(16), 2(23) and Section 3 of the Act and the Central Motor Vehicles Rules, 1989.

30. The provisions as applicable at the time of the accident have to be considered. In the instant case, the accident took place on 10.9.1996 and the amendment to the Act came w.e.f. 28.3.2001, hence findings returned by the Tribunal cannot be faulted in any manner. The driver was possessed with a valid and effective driving licence to drive the motor vehicle.

31. For the foregoing reasons, the appeal is dismissed.