

(2018) 08 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : First Appeal from Order (MVA) No. 2 of 2017

Oriental Insurance Company Ltd.

APPELLANT

Vs

Bhajan Singh And Others

RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173, 181, 189
Indian Penal Code, 1860 — Section 279, 337, 338

Citation : (2019) AAC 92

Hon'ble Judges : CHANDER BHUSAN BAROWALIA, J

Bench : Single Bench

Advocate : Lalit Kumar Sharma, Kiran Dhiman, Anirudh Sharma

Final Decision : Disposed Off

Judgement

Chander Bhusan Barowalia, J.

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988, is maintained by the appellant/Insurance Company (hereinafter referred to

as 'the appellant'). Subject matter of the present appeal is award, dated 30.05.2016, passed by the learned Motor Accident Claims Tribunal

III, Solan, District Solan, H.P. (for short 'the learned Tribunal') in M.A.C. Petition No.22 ADJ-II/2 of 2015/2011, titled as Shri Bhajan Singh

versus Mohinder Singh & others, with a prayer to set aside the impugned award.

2. Brief facts, giving rise to the present petition, are that respondent No.1 (hereinafter referred to as 'the petitioner') maintained claim petition

under Section 166 of the Motor Vehicles Act before the learned Motor Accident Claims Tribunal III, Solan, District Solan, H.P., against the appellant

and respondents No.2 to 4. As per the petitioner, that on 03.10.2010, at about 02:30 p.m., the petitioner was standing on the left side of the road on a

kacha portion at place Bakhalag, Tehsil Arki, District Solan, alongwith other person, then a truck bearing registration No.HPÂ07CÂ6862 was driven

in a rash and negligent manner, hit the petitioner, due to which the petitioner fell on the road. Due to the injuries sustained by the petitioner, he suffered

fracture and multiple injuries and initially he was treated in CHC, Arki and thereafter, he was referred to IGMC, Shimla, where he remained admitted

for a considerable period and spent more than Rs.50,000/Â on his treatment. FIR No.101/2010, dated 03.10.2010 was registered in Police Station,

Arki. It has been alleged that the accident has occurred due to the rash and negligent driving by the driver of the truck in question.

3. Respondent No.1 resisted and contested the petition by filing reply and denied therein that the petitioner was getting Rs.7,000/Â per month and

submitted that false FIR was registered in Police Station, Arki, District Solan. It has been mentioned that at the time of accident, respondent No.2 was

not driving the vehicle. It has also been mentioned that the respondent was plying his vehicle through Rajender Kumar son of Babu Ram, resident of

village Buila, P.O. Saryanj, Tehsil Arki, District Solan, H.P. It has been denied that the truck bearing registration No.HPÂ07CÂ6862 hit the petitioner

at Bakhalag and it was driven in a rash and negligent manner. It has been further denied that the petitioner has spent more than Rs.50,000/Â on his

treatment and that the truck in question was not involved in this accident. Respondent No.3 (Insurance Company) is the insurer of the truck.

Respondent No.3 also resisted and contested the petition by filing its reply and submitted that the driver of the vehicle in question was not having valid

and effective driving licence at the time of the accident and the vehicle did not have a valid Registration Certificate, permit, fitness certificate etc., and

the amount claimed is highly exaggerated, inflated and that the petitioner has colluded with respondents No1 and 2.

4. From the pleadings of parties, following issues were framed by the learned Tribunal below on 19.02.2013:

â??1. Whether the petitioner sustained injuries in a motor accident which took place on 03.10.2010 at about 2:30 p.m., due to rash and negligent

driving of vehicle No.HPÂ07CÂ6862 being driven by respondent No.2? â?!. OPP.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled for the grant of compensation, if so, to what amount and from which of the

respondents? â?|. OPP.

3. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident? â?|.OPR3.

4. Whether the vehicle was being driven in violation of provision of motor vehicle Act and also in breach of terms and conditions of the standard insurance policy? â?|.OPR3.

5. Relief.â??

5. After deciding Issue No.1 in affirmative and partly allowed Issue No.2 and Issue Nos. 3 and 4 in negative, the learned Tribunal awarded the compensation of Rs.30,000/Â with interest at the rate of 9% per annum from the filing of the petition till realization thereof. The Insurance Company assailed the present award on the following grounds:

(1) That the impugned award is against the law and facts of the case, apart from being based on surmises and conjectures, which is liable to be quashed and set aside;

(2) That the finding of the learned Tribunal below on Issues No.3 & 4 is perverse as neither the pleading exchange between the parties nor the evidence produced on record has been appreciated in its right perspective which has caused miscarriage of justice to the appellant. As a matter of fact, the learned Tribunal has discussed the evidence on Issues No.3 and 4, while deciding Issues No.1 and 2 jointly. It has been alleged that such

approach of the learned Tribunal below is erroneous. Even otherwise also the appellant in order to prove the fact that at the time of accident,

respondent No.3, Navesh Kumar was the driver of the vehicle, who was not only minor, but also was not possessing any driving licence, has proved

this fact with the help of RWÂ1 Kumari Tamana the official of the Insurance Company, who has proved the insurance policy of the vehicle vide

RWÂ1/A and also the report of the investigator vide RW/B. The contention of RWÂ1, in this regard has been corroborated by RWÂ2, Kamal

Narayan, Investigator and RWÂ4 HC Suresh Kumar, Investigating Officer of the FIR in question. All these witnesses have proved that at the time of

accident Navesh Kumar was the driver and Rajinder Kumar was not the driver, as alleged by the owner of the vehicle namely Mahinder Singh.

RWÂ4 Suresh Kumar, who was the Investigating Officer, has categorically stated that Navesh Kumar was the driver of the vehicle, who was not

possessing any licence and was challaned under Sections 279, 337, 338 of the Indian Penal Code and under Sections 181 and 189 of the Motor

Vehicles Act. It has been alleged that had the learned Tribunal below appreciated the statement of PW1, RW1, RW2 and RW4 in its right

perspective, it would not have given the finding that Rajinder Kumar was a driver. Thus, the impugned award is liable to be set aside;

(3) That the owner/insured has taken the false plea by introducing Rajinder Kumar, as driver, by taking the advantage of the factum of FIR Ext.PW??

1/A, where the name of the driver was missing. It has been alleged that initially the claim petition was preferred by stating that Navesh Kumar was

the driver, however, subsequently the amendment was moved and Rajinder Kumar was introduced as driver. Further, it has been alleged that witness

RW6 has not specifically deposed that Rajinder Kumar was the driver of the vehicle at the time of accident;

(4) That when there is enough evidence on record to prove that at the time of accident, the offending vehicle was being driven by minor respondent

No.3, who was not having any driving licence, thus, the entire liability ought to have been shifted upon the owner only and the insurer/appellant should

have been exonerated. The contrary finding based on misappreciation of evidence and the pleadings being perverse is liable to be set aside, Hence, it

has been prayed that the interest @ 9% per annum is also on higher side and the same may be reduced.

6. I have heard the learned counsel for the parties and have gone through the record.

7. Shri Lalit Kumar Sharma, learned counsel for the appellant has argued that the learned Tribunal below has not taken into consideration the fact that

the vehicle was being driven by another driver at the time of accident, whose name was Navesh Kumar and he was not in a position to drive the

vehicle and was not having a valid and effective driving licence. The name of Rajinder Kumar has been introduced. He has further argued that the

learned Tribunal below has failed to take into consideration this fact and fixed the liability on the Insurance Company.

8. On the other hand, Ms. Kiran Dhiman, learned counsel appearing for respondent No.1, has argued that the driver was having valid and effective

driving licence. As the claimant has suffered multiple injuries, so, the award passed by the learned Tribunal below needs no interference.

9. Shri Anirudh Sharma, learned counsel appearing for respondent No.3 has argued that it was Rajinder Kumar, who was driving the vehicle at the time of accident and the said fact is proved on record.

10. To appreciate the arguments of the learned counsel appearing on behalf of the parties, I have gone through the record in detail.

11. PWÂ2, (the petitioner) at the time of lodging of FIR, has clearly stated that at the time of accident, it was Rajinder Kumar, respondent No.4, who

was driving the vehicle. Similarly, RWÂ5, Mohinder Kumar, owner of the vehicle, while appearing in the witness box, has also stated that Rajinder

Kumar was driving the vehicle. Driving licence of Rajinder Kumar is on the record, which is Ext.RÂ5 and this driving licence shows that Rajinder

Kumar was authorized to drive the heavy transport vehicle with effect from 28.05.2004.

12. From the above, it is clear that the owner of the vehicle has discharged the liability by proving that it was Rajinder Kumar, who was driving the

vehicle at the relevant time. There is no cogent and convincing evidence on record on behalf of the Insurance Company to prove that Rajinder Kumar

was not driving the vehicle at the relevant time. Further, the owner of the vehicle has taken sufficient care and caution to appoint a person who was

having a valid and effective driving licence and there is nothing on record to prove that Rajinder Kumar was not having a valid and effective driving

licence.

13. In these circumstances, as the owner of the vehicle has taken due care and caution and he has appointed a licenced driver, this Court finds no

infirmity or illegality with the award passed by the learned Tribunal below. No other point has been argued which needs consideration.

14. The net result of the above discussion is that the findings, as recorded by the learned Tribunal below, are just reasoned and after appreciating the

evidence, which has come on record to its true perspective, needs no interference. Hence, the appeal deserves dismissal and the same is accordingly disposed of.

15. Pending application(s), if any, shall also stands disposed of accordingly.