

(2016) 06 SHI CK 0101
In the High Court Of Himachal Pradesh
Case No : FAO No. 4163 of 2013.

**Oriental Insurance Company Ltd. - Appellant @HASH Sh Dev Sawroop
and Others**

Date of Decision : 17-06-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2017) AAC 916 : (2016) ILRHP 1971

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Ashwani K. Sharma, Senior Advocate with Mr. Nishant Kumar, Advocate, for the Appellant; Mr. Rajesh Kumar vice Mr. Rajinder Thakur, Advocates, for the Respondent Nos. 1 to 4; Mr. Peeyush Verma, Advocate, for the Respondent Nos. 5 and 6

Final Decision : Dismissed

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral) - FAO No. 4163 of 2013 is directed against the award dated 5th April, 2013, passed by the Motor Accident Claims Tribunal-I, Sirmaur, District at Nahan, H.P. (for short "the Tribunal") in MAC Petition No. 41-MAC/2 of 2011, titled Dev Sawroop v. Jagmohan Singh & others, whereby compensation to the tune of Rs. 1,84,600/- with interest at the rate of 7.5% per annum from the date of the claim petition till its realisation was granted in favour of the claimant-respondent No. 1 herein and the insurer-appellant was saddled with liability, hereinafter referred to as "impugned award-I".

2. By the medium of FAO No. 444 of 2012, the appellant-insurer has questioned the award dated 31st August, 2012, passed in MAC Petition No. 54-MAC/2 of 2010, titled Kamla Devi & others v. Jagmohan Singh & others, whereby compensation to the tune of Rs. 6,55,000/- with interest at the rate of 7.5% per annum from the date of the claim petition till its realisation was granted in favour of the claimants-respondents No. 1 to 3 and the insurer-appellant was saddled with liability, hereinafter referred to as "impugned award-II".

3. Both these appeals are outcome of the vehicular accident, which was allegedly

caused by driver, namely, Yashpal @ Ramesh Kumar, while driving vehicle-tractor bearing registration No. HP-16-3208, at about 3.00 p.m. at Dawade Ki Ser, Tehsil Pachhad, District Sirmaur, H.P., in which Lal Chand and Dev Swaroop sustained injuries, and Lal Chand succumbed to the same.

4. Injured Dev Swaroop and legal heirs of the deceased Lal Chand filed claim petitions before the Tribunal for grant of compensation as per the break-ups given in the claim petitions.

5. The insurer, driver and owner-insured have resisted the claim petitions on the grounds taken in their memo of objections.

6. Almost similar issues were framed by the Tribunal in both the claim petitions. I deem it proper to reproduce the issues in one of the claim petitions i.e. Claim Petition No. 41-MAC/2 of 2011:-

"1. Whether the petitioner sustained injuries in the motor vehicle accident, which occurred due to rash and negligent driving of the offending vehicle i.e. tractor No. HP-16-03208 by respondent No. 2 on 5-8-2010 at about 10.45 PM. near Dawade-ke-ser near village Bagod Bhenllan, as alleged?OPP

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

3. Whether the petition is not maintainable in the present form, as alleged?....OPR-3

4. Whether the driver of the offending vehicle did not possess a valid and effective driving licence at the relevant time, as alleged?OPR-3

5. Whether the offending vehicle was being driven in contravention of the terms and conditions of the Insurance Policy, as alleged?OPR-3

6. Whether the claim petition has been filed by the petitioner in collusion with the respondent No. 1 & 2, as alleged?OPR-3

7. Relief."

7. The claimants have led evidence in both the claim petitions. The insurer, driver and owner have not led evidence in Claim Petition No. 41-MAC/2 of 2011, subject matter of FAO No. 4163 of 2013. Thus, the evidence led by the claimants has remained unrebutted.

8. The insurer has led evidence in Claim Petition No. 54-MAC/2 of 2010, subject matter of FAO 444 of 2012. However, the driver and owner have not led any evidence.

9. I have gone through the record. The Insurance Policy is on the file of Claim Petition No. 41-MAC/2 of 2011, subject matter of FAO No. 4163 of 2013, which does disclose that it covers the risk of "1+1".

10. It was for the insurer to plead and prove that the owner has committed wilful breach in terms of the mandate of Sections 147 & 149 of the Motor Vehicles Act, for short "the Act" read with the terms and conditions contained in the insurance policy, as held by the Apex Court in National Insurance Co. Ltd. v. Swaran Singh & others, reported in AIR 2004 Supreme Court 1531. It is apt to reproduce relevant portion of para 105 of the judgment herein below:

"105.

(i)

(ii)

(iii)

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v)

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of available the Act."

11. The Apex Court in the case titled as Pepsu Road Transport Corporation v. National Insurance Company, reported in (2013) 10 SCC 217 has laid down the same principle.

12. This Court in FAO No. 322 of 2011, titled as IFFCO-TOKIO Gen. Insurance Company Limited v. Smt. Joginder Kaur and others, decided on 29.08.2014 and FAO No. 523 of 2007, titled as Oriental Insurance Company Ltd. v. Smt. Rikta alias Kritka & others, decided on 19.12.2014, has laid down the same principle.

13. The argument of the learned Counsel for the insurer that Tribunal has fallen in an error in saddling the insurer with liability, is devoid of any force for the reason that the insurer has failed to prove it.

14. Having said so, both the appeals are dismissed and impugned awards are upheld.

15. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned awards, through payees account cheque or by depositing in their accounts.

16. Send down the record after placing a copy of the judgment on each of the Tribunal's file.