(2016) 06 SHI CK 0165

In the High Court Of Himachal Pradesh

Case No : FAO No. 537 of 2007

Oriental Insurance Company Ltd. — APPELLANT

Vs

Smt. Babita Kumari — RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 149

Citation : (2016) AAC 1893 : (2016) ILRHP 1774

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Ms. Shilpa Sood, Advocate, for the Appellants; Mr. Sanjay Dutt Vasudeva, Advocate, for the Respondents No. 1, 3 and 4; Nemo, for the Respondents No. 2 and 5 to 9; Mr. Naveen K. Bhardwaj, Advocate, for the Respondents No. 10

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J. (oral)—Subject matter of this appeal is the award and judgment, dated 31st August, 2007, made by the Motor Accident Claims Tribunal-II, Kangra at Dharamshala, H.P., (for short, "the Tribunal") in MACP No.45-K/2002, titled Smt. Babita Kumari & others v. Karam Chand & others, whereby a sum of Rs. 4,57,000/- along with interest at the rate of 7?% per annum came to be awarded as compensation in favour of the claimants and the insurer was saddled with the liability (for short the "impugned award").

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

3. The only dispute is whether the insurer came to be rightly saddled with liability? The dispute revolves around issues No.2 to 4.

4. The Insurance Policy is on the file as Ext.RX, which is not in dispute. Perusal of the same does disclose that the seating capacity of the offending vehicle i.e.

Tractor, bearing registration No. HP-40-658, was ?3?, i.e., ?2+1?. Meaning thereby the risk of two labourers and one driver was covered.

5. It was for the insurer to plead and prove that the owner-insured has committed breach of the terms and conditions of the insurance policy and the mandate of Section 149 of the Motor Vehicles Act, 1988 (for short, "the M.V. Act"), has not led any evidence.

6. However, the Tribunal has made discussion in paras 10 to 14 of the impugned award and held that the driver was having a valid and effective driving licence, the owner-insured has not committed any wilful breach, thus, the insurer is to be saddled with liability.

7. The Tribunal, while determining issue No.4, has rightly recorded finding in para 17 of the impugned award that the offending vehicle was insured with the insurer.

8. Viewed thus, the Tribunal has rightly made the impugned award, needs no interference.

9. Having said so, the impugned award is upheld and the appeal is dismissed.

10. The Registry is directed to release the awarded amount in favour of the claimants, strictly as per the terms and conditions contained in the impugned award through payees? account cheque or by depositing the same in their respective bank accounts.

11. Send down the record after placing copy of the judgment on the Tribunal?s file.