

(2001) 12 SHI CK 0008
In the High Court Of Himachal Pradesh

Oriental Insurance Company Ltd.

APPELLANT

Vs

Walayati Ram and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2002) 2 ACC 179

Hon'ble Judges : Lokeshwar Singh Panta, J;Arun Kumar Goel, J

Bench : Division Bench

Judgement

Arun Kumar Goel, J.—Both these appeals are being taken up together since they have arisen out of the same accident. Facts relevant for deciding these are being briefly noted hereinafter:

F.A.O. No.70 of 1996:

Wilayati Ram is the husband and Umesh Kumar is the son of late Smt. Savitri Devi (hereinafter referred to as the claimants"). On the fateful day i.e. 10th July, 1993 deceased along with claimant No. 1 Wilayati Ram were travelling in Taxi bearing Registration No. HPY-866. It was being driven by Nazir Ali. It was owned by Shri Des Raj and was admittedly insured with Oriental Insurance Company Ltd. They were on way from Nahan to Chamba.

2. When this Taxi reached near a place known as Panchpulla, (shown as Panchkula in the statement), near Banikhet on Pathankot Chamba Highway, there was a land slide. It was also raining. According to the claimants, Wilayati Ram asked the driver not to cross the blockade. Ignoring this request of Wilayati Ram Nazir Ali tried to go across the blockade when the van rolled down into the "Khad". This resulted in causing injuries to Wilayati Ram for which he had filed Claim Petition No. 32-N/2 of 1995/1993.

3. Besides this his wife Savitri Devi, son Rajesh Kumar and driver Nazir Ali died in the accident. According to the claimants, deceased Savitri Devi was drawing a monthly salary of Rs. 4,449/-. After accident postmortem of deceased was

carried out and its report is Ext. PM. FIR was also registered vide Ext. PH and salary certificate of the deceased is Ext. PJ.

4. From the record, it is made out that Wilayati Ram is getting family pension on account of death of Smt. Savitri Devi to the extent of Rs. 2,000/- per month. Thus loss of income was assessed at Rs. 2,400/- per month and dependence was worked out at Rs. 1,500/- per month or say Rs. 18,000/- per annum. By applying a multiplier of 8, a figure of Rs. 1,44,000/- was worked out. To it, a sum of Rs. 10,000/- was added on account of consortium payable to Wilayati Ram, besides this, Rs. 5,000/- as conventional amount and a further sum of Rs. 2,000/- on account of funeral expenses was also allowed. Thus a total compensation assessed was Rs. 1,61,000/-, plus 12% interest per annum from October 11, 1993.

5. Appellant Insurance Company is aggrieved by this award. In this case as a question of fact it may be noted that the Tribunal below framed issues on 6.12.1994. Claimants closed their evidence on 8th August, 1995. Thereafter the case was adjourned on different dates for evidence of the respondents. One witness that was intended to be examined was the Dealing Hand of the Registering and Licencing Authority, Faizabad (U.R) on behalf of the appellant - Insurance Company. Finally the evidence of the Insurance Company was closed on 4.12.1995 and the case was adjourned for arguments for 7.12.1995.

6. We may also note here that though this witness was served twice but he did not appear. Learned Tribunal below observed that since the witness was residing outside the jurisdiction of the Tribunal and the distance was more than 1000 kms. coercive method cannot be adopted. As such time was allowed to the Insurance Company to produce the said witness on its self responsibility on 4.12.1995 when order as aforesaid was passed.

7. Arguments were heard on 7.12.1995. Prior to it on 4.12.1995, an application was filed by the Insurance Company to appoint a Local Commissioner to inspect the records of the Registering and Licencing Authority, Faizabad (U.R) and record the statement of the Dealing Hand pertaining to the driving licence of Nazir Ali. This application was also declined by the Tribunal below while closing the evidence on 4.12.1995. Finally, arguments were heard and award as aforesaid was passed in favour of the claimants, inclusive of Rs. 25,000/- already received by them u/s 140 of the Motor Vehicles Act. Thus, remaining amount of Rs. 1,36,000/- was made payable with interest @ 12% per annum from 11th October, 1993 till it was deposited in the Court. Wilayati Ram has been allowed Rs. 1,00,000/- whereas Umesh Kumar claimant No. 2 has been allowed Rs. 36,000/- with proportionate interest.

8. This appeal has arisen out of the MAC Petition No. 3-N/2 of 1995/93.

F.A.O. No. 87 of 1996:

9. This appeal has arisen against the award of Motor Accident Claims Tribunal-I,

Sirmaur District at Nahan, passed in MAC Petition 2-N/2 of 1995/93. Wilayati Ram and Umesh Kumar had filed this petition claiming compensation regarding death of Rajesh Kumar. He was son of Wilayati Ram and brother of Umesh Kumar. Other facts regarding the accident etc. are identical as narrated in F.A.O. No. 70 of 1996 (supra). Deceased was 27 years of age and was to be married on the fateful day. According to the claimants, he was earning Rs. 3/4 thousand per month from private works. He was matriculate and had done his Pre University and had also obtained proficiency certificates. Copies of these were placed on the file as Exts. PA to PD. Ext. PE is his postmortem report and Ext. PF is F.I.R., regarding accident in question registered at Police Station, Dalhousie.

10. Taking the income of the deceased as Rs. 3,000/- per month, dependence was worked out at Rs. 800/- per month or say Rs. 9,600/- per annum. Looking to the age of Wilayati Ram - claimant No. 1, multiplier of 8 was applied in this case. Thus, amount worked out came to Rs. 76,800/-. To this sum Rs. 5,000/- was added as conventional loss and Rs. 2,000/- towards funeral and other expenses. Thus, in all a sum of Rs. 83,800/-, inclusive of Rs. 25,000/- awarded u/s 140 of the Motor Vehicles Act was allowed. In addition to this, interest was also allowed @ 12% per annum from 11th October, 1993 till the amount was deposited in the Tribunal. This amount was made payable only to Wilayati Ram and not to Umesh Kumar who was found to be a married person and was not dependent on his deceased brother Rajesh Kumar.

11. Stand of the owner as well as Insurance Company in both these cases before the Tribunal was that the vehicle in question was insured with the Insurance Company. The owner further stated that Nazir Ali was his authorised driver. He admitted the factum of accident and further pleaded that liability, if any, is of the Insurance Company. On the other hand, appellant Insurance Company claimed that the deceased was not holding a valid driving licence, therefore, it cannot be fastened with any liability in either of the two cases. It, however, admitted that the vehicle in question (Taxi bearing Registration No. HPY - 866) was insured with it. After scrutiny of evidence, the Tribunal below assessed compensation as aforesaid.

12. We have heard learned Counsel for the parties, with whose assistance the record of files of these cases has also been examined. The only ground urged in respect of both these appeals by Mr. L.C. Kapoor, learned Counsel for the Insurance Company, is that the deceased was not holding a valid driving licence. This fact has been verified by deputing a Surveyor who had gone through the record of the Registering and Licensing Authority, Faizabad. From where it was found that the driving licence in question was not genuine. As such his client has been condemned unheard without giving a reasonable opportunity to show that it is not liable for payment of any compensation on account of the driver holding a fake licence.

13. In case the Insurance Company had been able to prove by leading cogent, reliable, trustworthy and legal evidence, this submission was bound to find

favour with this Court. However, record of both these cases suggests that though specific defence had been taken regarding licence of Nazir Ali being fake, no steps were taken to lead evidence in this behalf. We may observe that issues in these cases were framed on 6th December, 1994. Thereafter the cases proceeded and finally vide order dated 4.12.1995 evidence of the Insurance Company was closed as also application filed on its behalf in both the cases to issue commission as noted above was also turned down. Arguments were heard and the award was pronounced.

14. In this behalf we may observe that as per the provisions of Section 169 of the Motor Vehicles Act, the Claims Tribunal can, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. The claims Tribunal has the powers of a CPC for the purpose of taking evidence on oath and for enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects. And also for such other purpose as may be prescribed. The Tribunal as per Section 169(2) is a Civil Court for purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

15. No steps were admittedly taken by the Insurance Company to summon any of its witnesses. A prayer in writing was made to summon the Dealing Hand from the Registering and Licensing Authority, Faizabad (U.P.). Another application for issuance of commission to inspect the record relating to the issuance of the driving licence in question of Nazir Ali was filed on 4th December, 1995. Claimants had closed their evidence on 8.8.1995. So far as witness from Faizabad is concerned, he was not a person ordinarily residing within the jurisdiction of the Tribunal and could not have been ordered to have been summoned in view of the provisions of Order XVI Rule 19 of the C.P.C. This rule of C.P.C. is applicable as per Rule 20 of the Himachal Pradesh Motor Accidents Claims Tribunals Rules, 1960, which were in force and governed the claim petitions.

16. Insurance Company was well aware that the witness they wanted to examine was not residing within the jurisdiction of the Tribunal. In fact, in the first instance itself it ought to have taken steps to get him examined on commission in accordance with law. It was only when it had taken a chance by firstly not summoning the witness timely, and thereafter by getting the witness served filed the application on 4th December, 1995 which was turned down by the Tribunal below and, in our opinion, rightly so, appellant - Insurance Company cannot be permitted to say that it is either above law or will not follow it.

17. When this conclusion is arrived at, we are satisfied that no error has been committed by the learned Tribunal below in passing the impugned award. In the absence of any legal evidence, it cannot beheld that the deceased driver was not holding a valid licence on the date of accident. It hardly needs to be pointed out that this was a defence set up by the Insurance Company. In order to succeed it was incumbent upon it to have proved it.

18. In this behalf what was held by the Supreme Court in *Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others*, was as under:

To sum up the Insurance Company failed to prove that there was a breach of the term of the contract of insurance as evidenced by the policy or insurance on the ground that the driver who was driving the vehicle at the relevant time did not have a valid driving licence. Once the Insurance Company failed to prove that aspect, its liability under the contract of insurance remains intact and unhampered and it was bound to satisfy the award under the comprehensive policy of insurance.

19. Thus, the plea of the Insurance Company is not supported from the record. Therefore, what follows from this that this is a case of no evidence on its part and as such no exception can be taken to the impugned award passed by the Tribunal below.

20. No other point is urged.

21. In view of the aforesaid discussion, there is no merit in these appeals which are accordingly dismissed with no order as to costs. Registry is directed to place a copy of this judgment on the file of F.A.O. No. 87 of 1996.