(2018) 08 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No.317 of 2017

Rakesh Kumar APPELLANT

Vs

Mani Devi & ors. RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Moto Vehicles Act, 1988 — Section 173
Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2018) 08 SHI CK 0033

Hon'ble Judges : CHANDER BHUSAN BAROWALIA, J

Bench : Single Bench

Advocate : Neel Kamal Sood, Vasu Sood, Ruchi Kumari, Rajesh Kasyap, Pritam Singh Chandel

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/respondent No.1 (hereinafter referred to as

â??respondent No.1â??) for quashing and setting aside the impugned award, dated 02.05.2016, passed by the learned Motor Accident Claims

Tribunal, Kinnaur at Rampur Bushahr, District Shimla, H.P, in MAC Petition No.29 of 2014.

2. Brief facts giving rise to the present appeal are that on 20.4.2014, Maghu Ram (deceased) son of Nathu Ram, was travelling in Bolero Camper

bearing No.HP-06A-4729 from Averi to Nehra alongwith others. He was going to attend marriage at Village Nehra, around 6:30 PM, the vehicle

being driven by proforma respondent (hereinafter referred to as â??respondent No.2â??) rashly and negligently went off the road into dhank at

Shaloon Kainchi, resulting into death of Maghu Ram, on the spot. His post-mortem examination was conducted at MGMSC, Khaneri, Tehsil Rampur

Bushahr, District Shimla, case FIR No.42/2014 dated 20.4.2014, under Sections 279, 337 and 304-A of the Indian Penal Code, was registered at

Police Station, Rampur Bushahr. It is alleged that the deceased Maghu Ram, lost his life in a motor vehicle accident being driven by respondent No.2,

by his rash and negligent driving of Bolero Camper bearing No.HP-06A-4729. The deceased was a private builder and was earningRs.20,000/- per

month. The petitioners are the legal heirs and dependents of the deceased. Respondent No.1 (hereinafter referred to as â??petitioner No.1â??) is the

widow and respondent No.2 (hereinafter referred to as â??petitioner No.2â??) is his mother. Hence, the present petition.

3. Respondents No.1 and 2 by filing joint reply have admitted the factum of accident having taken place on 20.4.2014 at about 6:30 PM, at Shaloon

Kainchi, Tehsil Rampur Bushahr, District Shimla, involving vehicle bearing No.HP-06A-4729 being driven by respondent No.2. It is also admitted that

the deceased Maghu Ram alongwith others was travelling in the vehicle from Averi to Nehra to attend the marriage ceremony. It is also admitted that

Maghu Ram lost his life in the said accident. However, it is denied that the cause of accident was rash and negligent driving of the vehicle by

respondent No.2. The vehicle was duly insured with respondent No.3. Respondent No.3-Insurance Company, submitted that the insured was not

possessing valid Registration Certificate, permit and fitness certificate with respect to vehicle bearing No.HP-06A-4729. However, at the time of

accident, the deceased was travelling in the vehicle, in violation to the terms and conditions of the insurance policy as an unauthorized/gratuitous

passenger, therefore, the Insurance Company is not liable to indemnify the insured keeping in view the breach of the mandatory terms and conditions

of the insurance policy.

4. From the pleadings of parties, the learned Tribunal below framed following issues:

â??1. Whether Sh. Maghu Ram had died in a motor vehicle accident on account of the rash and negligent driving of vehicle No.HP-06A-4729

(B/Camper) being driven by respondent No.2? OPP.

2. Whether the petitioners are entitled for compensation, if so, to what amount

and from whom ? OPP.

3. Whether the petition is not maintainable in the present form, as alleged ? OPR-1 to 3.

4. Whether the insured has violated the mandatory terms and conditions of the insurance policy, as alleged ? OPR-3.

5. Whether the offending vehicle at the relevant time was being plied without valid registration and fitness certificates, as alleged ? OPR-3.

6. Whether the respondent No.2 at the relevant time was not holding a valid and effective driving licence, as alleged ? OPR-3.

7. Whether the petition has been filed in collusion with respondents No.1 and 2, as alleged ? OPR- 3.

8. Whether the deceased was travelling in the offending vehicle as a gratuitous passenger, as alleged ? OPR-3.

9. Whether the accident took place due to overloading of the offending vehicle and the deceased himself contributed to the accident, as alleged ?

OPR-3.

10. Relief.â??

5. The learned trial Court after deciding Issues No.1, 2 in affirmative, Issues No.3, 5, 7, 9 in negative, Issues No.4, 6, 8 in affirmative, allowed the

petition.

6. Learned counsel appearing on behalf of the petitioner has argued that the impugned award passed by the learned Tribunal below is against the law,

as the learned Tribunal below has wrongly held that deceased Maghu Ram was a gratuitous passenger. He has argued that the impugned award

passed by the learned Tribunal below is liable to be set aside and so, respondent No.3-Insurance Company is liable to pay the amount. He has further

argued that the compensation amount passed by the learned Tribunal below is on the higher side and is required to be modified.

7. On the other hand, learned counsel appearing on behalf of respondents No.1 and 2 has argued that the impugned award passed by the learned

Tribunal below is just, reasoned and in accordance with law. Learned counsel appearing on behalf of respondent No.3-Insurance Company has

argued that the deceased Maghu Ram was a gratuitous passenger and is not covered, under the terms and conditions of the policy and prays for

dismissal of the present appeal.

8. In rebuttal, learned counsel appearing on behalf of the petitioner has argued that there was a valid driving licence with the driver and the vehicle is

insured with respondent No.3-Insurance Company and there is no proof that deceased Maghu Ram, was a gratuitous passenger. He has further

argued that the driving licence was valid on the date of occurrence. In these circumstances, the present appeal deserves to be allowed.

9. To appreciate the arguments of learned counsel appearing on behalf of the parties, I have gone through the record of the case carefully.

10. As far as the driving licence of respondent No.2-driver is concerned, it is clear from the record that the licence of driver was cancelled by the

Licensing Authority on 1st August, 2014. The accident has taken place on 20.4.2014 meaning thereby that on the date of occurrence, driver was

having a valid driving license.

11. As per copy of FIR No.42 of 2014 Ex.PW1/B, ten persons were travelling in the vehicle out of which, two died and the remaining eight sustained

injuries. The deceased was travelling in this vehicle from Averi to Nehra, to attend marriage ceremony. Therefore, it is apparent that at the time of

accident, no goods were being transported in the vehicle rather it was being used as a passenger vehicle.

12. PW-1, Mani Devi, has admitted in her statement that the deceased had neither hired the vehicle nor he was transporting any goods therein.

Therefore, it can be inferred that deceased Maghu Ram, at the time of accident was travelling in the vehicle as unauthorized passenger.

13. The position of the gratuitous passenger has been explained by the Honâ?? ble Supreme Court in New India Assurance Co. Ltd. vs. Asha Rani

and others (2003) 1 SCC 223, Oriental Insurance Company vs. Devireddy Konda Reddy, (2003) 2 SCC 339, National Insurance Company Ltd. vs.

Baljit Kaur and others (2004) 2 SCC 1, National Insurance Company Ltd; vs. Ajit Kumar and others (2003) 9 SCC 668, National Insurance Company

vs. Chinnamma & ors. (2004) 8 SCC 697, National Insurance Co. Ltd. Vs. Cholleti Bharatamma & others (2008) 423, National Insurance Company

Ltd. Vs. Bommithi Subbahayamma, 2005 ACJ 721 (SC) and New India Assurance Company Ltd. vs. Vedwati, (2007) 9 SCC 486. In National

Insurance Company Ltd. Vs. Kaushalaya Devi, 2008 ACJ 2144 (SC), the Honâ?? ble Supreme Court held that gratuitous passenger cannot be compensated from Insurance Company and it is owner/driver of the vehicle who are liable to pay the same.

14. As far as the driving licence is concerned, as discussed hereinabove, it was valid. However, the petitioner was travelling in a vehicle as gratuitous

passenger, so Insurance Company cannot be held liable. Now, coming to the quantum of compensation is concerned, the compensation on account of

dependency to the family is concerned, the same needs no interference, as the same is calculated after taking into consideration all the material facts

and evidence, which have come on record to its true perspective. As far as the loss of love and affection is concerned, the learned Tribunal below has

grantedRs.1,00,000/-, but as per the settled position of Honâ??ble Apex Court, no amount can be granted and so, this amount ofRs.1,00,000/-required

to be deducted. However, loss of consortium, the learned Tribunal below has grantedRs.1,00,000/-, but as per the law settled in Honâ??ble Apex

Court, onlyRs.40,000/-, can be granted and so, it is reduced toRs.40,000/-. The learned Tribunal below has grantedRs.25,000/- towards funeral

expenses, but as per the settled position of Honâ??ble Supreme Court, onlyRs.15,000/- can be granted and so, compensation of funeral expenses are

required to be reduced toRs.15,000/-.

15. As a result of the above discussion, the impugned award, passed by the learned Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr,

District Shimla, dated 02.05.2016 and compensation is reduced byRs.1,75,000/- and rest of the award will remain as it is. No order as to costs. The

appeal stands disposed of, so also miscellaneous applications, if any.

