
(2004) 08 SHI CK 0011
In the High Court Of Himachal Pradesh

Rupinder Singh

APPELLANT

Vs

Girdhari Lal and Another

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(1), 149(2)

Citation : (2004) 3 ACC 432

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Judgement

Arun Kumar Goel, J.—When hearing in this case had commenced, learned Senior Counsel Mr. Patial, submitted that looking to the provisions of Sections 149(1) and (2) of the Motor Vehicles Act, 1988, and vehicle being admittedly insured with respondent No. 2 on the date of Accident liability to satisfy the award of Motor Accident Claims Tribunal-II at Mandi in Claim Petition No. 2 of 1993, decided on 28.12.1998, is that of respondent No. 2, i.e., Insurance Company. With a view to advance his this line of argument, Mr. Patial also pointed out that the said award dated 28.12.1998 was passed in the presence of parties. Therefore, the award is to be taken as having been passed after the parties had entered into a compromise. With a view to further buttress his submission, Mr. Patial also placed reliance on two decisions of this Court, in *Puran Chand v. Shyam Lal and Ors.* 2003 (2) S.L.C. 409, and *Himachal Road Transport Corporation v. Devi Singh and Anr.* III (2003) A.C.C. 480 : 2003 (1) S. L.C. 427.

2. On the other hand, all these pleas have been contested by Mr. Thakur as well as Mr. Bagga on behalf of the respondents. According to them, in the peculiar facts of this case and also keeping in view the award dated 28.12.1998, passed by the learned Tribunal below, this petition is devoid of any merit and is liable to be dismissed.

3. Relevant facts necessary for adjudication of this case, need to be noted briefly. Claim petition was filed by respondent No. 1 Girdhari Lal against Rupinder Singh. Admittedly, Oriental Insurance Company Limited was a party respondent No. 2

before the learned Tribunal below. Parties are not at variance on this factual aspect.

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

(1) Whether the petitioner received injuries in an Accident involving vehicle No. HP-02-450 being driven rashly and negligently by respondent No. 1? -OPP

(2) If Issue No. 1 is proved in affirmative, to what amount and from whom the petitioner is entitled to receive as compensation? -OPP

(3) Whether the driver was not possessing a valid licence for driving at the time of Accident. If so its effect? -OPR

(4) Relief.

5. Issue No, 3 clearly indicates that the Insurance Company was contesting and resisting the claim of Girdhari Lal on a legally available defence to it u/s 149(2) of the Motor Vehicles Act, 1988. Had the proceedings before the Claims Tribunal been taken to their logical end, in such a situation the Tribunal would have recorded findings amongst others on Issue No. 3 also. In case Insurance Company was successful, award would have been passed in favour of Girdhari Lal and against Rupinder Singh-present petitioner. But before that situation could come, on the basis of statements recorded of both the parties, i.e., Girdhari Lal and Rupinder Singh, matter was compromised in the lumpsum of Rs. 23,000/-. While passing award on the basis of the statements of these two parties. Learned Tribunal below held as under:

...Today, the parties entered into compromise. The petitioner had agreed to receive compensation of Rs. 23,000/- in full and final satisfaction of the claim from the respondent No. 1. The respondent No. 1 had agreed to pay a sum of Rs. 23,000/- to the petitioner in full and final satisfaction of the claim. The statements of the petitioner and the respondent No. 1 recorded. The petitioner is awarded a sum of Rs. 23,000/- as compensation u/s 168 of the Act against the respondent No. 1. The respondent No. 1 is directed to deposit amount of Rs. 23,000/- with this Tribunal within 3 months from today failing which he shall be liable to pay simple interest at the rate of 12% per annum from today till realization.

(Emphasis supplied)

6. A perusal of the aforesaid operative portion of the award clearly indicates that both the parties, i.e., Girdhari Lai as well as Rupinder Singh, compromised the matter inter se, without giving chance to learned Tribunal below to have adjudicated upon Issue No. 3. Further no award is passed against the Insurance Company.

7. At this stage, argument on behalf of the petitioner in this context needs to be noted. According to learned Senior Counsel, compromise was entered upon

between the parties and Insurance Company did not object in any manner whatsoever to the compromise. Therefore, now it cannot be allowed to say that the compensation, if any, is payable by his client and not by the Insurance Company in view of Section 149 of the Motor Vehicles Act, 1988. This argument has been raised to be rejected.

8. Reason being that no award was passed against the Insurance Company. It can safely be said that the claimant and respondent No. 1 did not want the same to be passed against Insurance Company. In case the petitioner wanted to be indemnified by the Insurance Company, nothing prevented him to have called upon the Tribunal below to record finding to that effect. In the face of this position, plea urged on behalf of the petitioner, that Insurance Company did not object to the compromise, is neither based on logic nor on reason much less law.

9. Another facet of this case is that execution was filed by respondent No. 1 Girdhari Lal before learned Tribunal below. He filed an application u/s 174 of the Motor Vehicles Act, 1988. Petitioner filed reply to this application and also raised separate objections against levy of execution. Amongst others, one objection was that liability for payment of compensation, if any, is that of Insurance Company. Learned Tribunal below rejected this objection on 21.9.2001. For ready reference, order passed on 21.9.2001, is extracted hereinbelow:

The award dated 28.12.1998 reveals that the Tribunal awarded a sum of Rs. 23,000/- as compensation against respondent 1. Respondent 1 was directed to deposit this amount within three months from the date of award. The Insurance Company i.e., respondent 2 is thus not liable to indemnify respondent 1 in the execution petition. Respondent 2, therefore, stands deleted. Learned Counsel for the petitioner wants to file the details of the employer of the respondent 1 so that the award amount may be recovered from the attachment of his salary and he seeks two weeks" time to file reply Allowed. To come up for reply on 19.10.2001.

10. A perusal of this order clearly shows that it was decided (wrongly According to learned Senior Counsel for petitioner Rupinder Singh), that Insurance Company was not liable to indemnify respondent No. 1 (present petitioner) in the execution petition and thus its name was ordered to be deleted. Admittedly, this order was subject matter of challenge in CMPMO No. 52 of 2002. This was disposed of on 10.4.2003. Order passed in this CMPMO was as under:

After arguing for a while, Mr. Y. Paul, learned Counsel for the petitioner seeks leave of the Court to withdraw this petition.

The petition is dismissed as withdrawn.

11. What follows from this discussion is that order dated 21.9.2001, as extracted hereinabove, became final intra parties including the finding that Insurance Company is not liable to indemnify the petitioner (Rupinder Singh), and the petitioner was not aggrieved by its deletion from the array of respondents in the

execution.

12. After the case had been decided by this Court on 10.4.2003, record of Trial Court shows that present petitioner filed another set of objections u/s 47 read with Section 151 of Code of Civil Procedure. These are dated 20.10.2003 and were filed on the same date. These are also on the same ground as noted hereinabove. In these objections also, prayer was made that liability is that of Insurance Company, who in law u/s 149 of the Motor Vehicles Act, 1988, is bound to indemnify the petitioner. These objections have been dismissed by means of impugned order which is subject matter of this petition.

13. Looking to the facts of this case as well as its background as noted hereinabove, admittedly no award was passed against the Insurance Company when it was party during the course of proceedings before the Tribunal below. Further it is admitted case of petitioner and respondent No. 1 that the matter was settled on their statements alone and as already observed, award was passed in favour of Girdhari Lal and against Rupinder Singh only. On what principle of law or otherwise, was the Insurance Company liable, I am not satisfied with what was argued on behalf of the petitioner. So far as award of Motor Accident Claims Tribunal supra is concerned, it is in nature of a decree. At the risk of repetition, it may be observed that it has been passed in favour of Girdhari Lal and against Rupinder Singh alone. In these circumstances, argument based on Sections 149(1) and (2) of the Act supra, on behalf of the petitioner, has no merit and is hereby rejected.

14. Similar is position of plea that matter was compromised between the parties. No doubt proceedings in claim petition were compromised, but between whom, file of the Tribunal shows (original file was also summoned), Girdhari Lal on one side and Rupinder Singh on the other and on the basis of this compromise, award was passed by the Tribunal below, operative portion whereof has been noted hereinabove. As such in no situation the impugned award can be said to have been passed against the Insurance Company also.

15. Now coming to two decisions of this Court cited by Mr. Patial. So far as plea that intimation of proceedings u/s 174 of the Motor Vehicles Act, 1988 was void or without jurisdiction based on the decision in case of Himachal Road Transport Corporation v. Devi Singh and Anr. (supra) is concerned, it is misconceived. In this case movable property of the Corporation was attached. Learned Judge after examining Section 174 of the Motor Vehicles Act, 1988 only held that special procedure is prescribed for recovery of money under an award under this section and, therefore, general procedure prescribed under CPC for the purpose of execution was not applicable. After holding so, judgment of Motor Accident Claims Tribunal was set aside being without jurisdiction. The Tribunal was directed to restore the execution and then dispose it of. For ready reference paragraph 6 of this judgment, which is relevant in the present case, is extracted hereinbelow:

In the result, this Court has no hesitation to hold that the order dated 26.4.2001 passed by the Motor Accident Claims Tribunal, whereby the movable property of the petitioner-judgment debtor-Corporation is ordered to be attached is without jurisdiction and it is set aside, as a consequence of which the subsequent order dated 26.6.2001 does not survive and it is also set aside. The Motor Accident Claims Tribunal, Shimla is directed to restore the execution petition to its original number and thereafter dispose it of in accordance with law after deciding the objections filed by the petitioner-judgment debtor-Corporation and after determining the amount due and payable to the respondent-decree holders and the award dated 5.10.1998 passed in M.A.C.T. Case No. 67-S/2 of 1997 titled Devi Singh and Another v. H.R.T.C after making adjustment of the amounts already paid to them by the petitioner-judgment debtor-Corporation. Since the petitioner-judgment debtor-Corporation has already deposited an amount of Rs. 34,010/- as per the demand of the respondent-decree holders the amount found due and payable will be paid to the respondent-decree holders out of this amount and the balance amount, if any, will be refunded to the petitioner-judgment debtor-Corporation. The revision petition is disposed of. No order as to costs.

16. In this behalf when Himachal Pradesh Motor Vehicle Rules, 1999 are examined, Rule 232 thereof specifically deals with applicability of CPC in certain case. For ready reference this Rule is extracted herein below:

The CPC to apply in certain cases:

The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as maybe, apply to proceedings before the Claims Tribunal, namely Order V, Rules 9 to 13 and 15 to 30, Order XI; Order XIII, Rule 3 to 10; Order XVI, Rules 2 to 21; Order XVII; Order XXI and Order XXIII, Rules 1 to 3.

17. This clearly makes Order XXI, CPC applicable to proceedings before the Claims Tribunal. Though a reference is made to the Rules in the judgment passed by the learned Judge in case of H.R.T.C. v. Devi Ram and Anr. (supra), yet it is not known whether Rules of 1960 framed by the then Union Territory of Himachal Pradesh or the Himachal Pradesh Motor Vehicles Rules, 1999 were being considered. In the view of the matter, emphasis laid by Mr. Patial that these are not to be looked into, is not correct. Reason being that there is no reference to Rule 232 (supra) in this judgment, and as already observed, it is not known whether Rules of 1960 or the present Rules were gone into by the learned Judge. As such, this decision has no applicability to the facts of the present case being on its own facts.

18. Other decision relied upon by Mr. Patial, is in the case of Puran Chand v. Shyam Lal and Ors. (supra). In this case plea urged on behalf of the Insurance Company was, that owner of the vehicle may be directed to indemnify it (the insurer). In support of this plea, reliance was placed on two decisions of Supreme Court in United India Insurance Company Ltd. Vs. Lehu and Others, , as well as in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., .

In this background it was held that Insurance Company shall pay the awarded amount. So far as its right to recover the same from owner is concerned, that question was left open keeping in view the findings on Issue No. 5 recorded by the Tribunal below. Therefore, this decision is also not applicable to the facts and circumstances of present case. Reason being that in the present case Rupinder Singh and Girdhari Lal entered into compromise. And Rupinder Singh voluntarily suffered the award that was based on their statements alone, whereas in the case of Puran Chand v. Shyam Lal and Ors. (supra), Insurance Company was directed to deposit the amount and liberty as reserved to it to recover this amount from the owner keeping in view the findings on Issue No. 5 by the Tribunal.

No other point is urged.

19. In view of the aforesaid discussion, there is no merit in this petition, which is Accordingly dismissed leaving parties to bear their own costs. All interim orders shall stand vacated. Amount lying in deposit is ordered to be remitted by the Registry with up-to-date interest to the Account of Girdhari Lal, number whereof Mr. Thakur submitted, will be furnished within two weeks from today.