

(2010) 02 P&H CK 0171
In the Punjab And Haryana At Chandigarh

The Oriental Insurance Company Ltd.	Vs	APPELLANT
Om Parkash and Others		RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Citation : (2010) 02 P&H CK 0171

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This judgment shall dispose of FAO No. 3007 and 3008 of 2008, titled The Oriental Insurance Company Ltd. v. Om Parkash and Ors., and The Oriental Insurance Company Ltd. v. Smt. Sumitra and Ors., respectively, as common question of law and facts are involved in both these appeals and they arise out of common award.

2. For the sake of brevity the facts are being taken from FAO No. 3007 of 2008.

3. This appeal by the Insurance Company is directed against the award dated 13.6.2008, passed by the learned Motor Accident Claims Tribunal, Jind (for short the Tribunal), vide which claim petitions filed by the claimants were allowed.

4. The liability to indemnify the owner was contested by the appellant, on the pleadings that respondent No. 5 i.e. the driver of offending vehicle was not holding, effective and valid driving licence at the time of accident.

5. On the pleadings of the appellant, issues No. 4 and 5 were framed, by the learned Tribunal which read as under:

4. Whether the respondent No. 1 was not holding a valid and effective driving licence at the time of accident, as alleged? OPR-3

5. Whether the Indica Car bearing registration No. HR-31B- 7589 was being driven in violation of terms and conditions of the Insurance Policy, as alleged?

6. Issues No. 4 and 5 were taken up together. The learned Tribunal answered these issues as under:

20. Onus to prove these issues was on respondent No. 3 Insurance Company. Pleadings cannot take place of proof. Evidence is required to sustain the pleadings. The Insurance Company has neither led any evidence nor has produced any material on file to prove these issues. On the other hand respondents No. 1 and 2 have placed on record copy of driving licence Ex.R.4 of respondent No. 1. The driving licence Ex.R.4 is valid and effective at the time of alleged accident. No evidence to the contrary has been brought on record to show violation of any terms and conditions of the Insurance policy. Consequently, both these issues are decided against respondent No. 3 and in favour of respondents No. 1 and 2 and also in favour of claimants.

7. Mr. Navin Kapur, learned Counsel appearing on behalf of the appellant challenged the award, on Issues No. 1, 2, 6 and 8 by contending the pleadings to be not sustainable in law.

8. The contention, of the learned Counsel for the appellant was that the claim petition was filed on false allegations, in collusion with the driver and owner of Indica Car No. HR-31B-7589, and also in connivance with the police.

9. No eye witness of the accident was examined. In the FIR lodged, it was mentioned, that the accident was caused by some unknown driver and vehicle. The driver of the offending vehicle, was thereafter implicated by recording a supplementary statement.

10. It was also contended that eye witness, was interested witness being brother of the deceased. The other contention was that the compensation awarded was on the higher side.

11. However, on consideration, I find no force in the contentions raised by the learned Counsel for the appellant.

12. Learned Tribunal, took into consideration oral as well as documentary evidence. FIR Ex.P.2, was read in evidence to record a finding, that the offending vehicle i.e. Indica car was involved in the accident. Learned Tribunal also took note of the post mortem report, to reach the conclusion, that the deceased Shis Ram son of Chhotu Ram had died in a motor vehicular accident. No fault, therefore, can be found with the findings recorded, on appreciation of evidence.

13. Compensation awarded, also cannot be said to be on higher side. The income of the deceased was assessed at Rs. 3000/- (Rupees three thousand only) per month. Multiplier applied was 5 keeping in view the age of the deceased. The dependency of 2/3rd was rightly assessed, and the compensation awarded is only Rs. 1,24,500/- (Rupees one lac twenty four thousand and five hundred only). Amount of compensation therefore cannot be said to be excessive, as

contended.

14. In FAO No. 3008 of 2008, it was proved that the deceased, was working as peon in the Haryana Animal Husbandry Department and was earning a sum of Rs. 10,000/- (Rupees ten thousand only) per month. Learned Tribunal assessed the income of the deceased at Rs. 7048/- (Rupees seven thousand and forty eight only) and calculated the dependency, at 2/3rd and applied multiplier of 17, keeping in view the age of the deceased, who was 34 years at the time of death. The claimants were awarded a sum of Rs. 9,66,192/- (Rupees nine lacs sixty six thousand one hundred and ninety two only) inclusive of loss of estate and funeral expenses. This again cannot be said to be on higher side, which may call for interference by this Court.

15. No merit.

16. Dismissed.