(2008) 09 SHI CK 0027

In the High Court Of Himachal Pradesh

The Oriental Insurance Company Ltd. APPELLANT

Vs

Smt. Maya and Others RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2009) ACJ 2419 : (2009) 1 ShimLC 104

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The insurer has come in appeal against the award dated 14.1.2004 passed by Motor Accident Claims Tribunal, Mandi in Claim Petition No. 24 of 2001 awarding Rs. 2,26,000 inclusive of amount already paid under no fault liability to respondents No. 1 to 4 along with 9% interest per annum from the date of filing of the petition till realization. The learned Tribunal held liable owner-cum-driver respondent No. 5 and appellant to pay the compensation.

2. The pleaded case of respondents No. 1 to 4 is that Beas Dev (now deceased) was on tour for collecting orders of salt. On 15.5.2000 he was on his way to Reckong Peo and the vehicle No. HP-28-1156, in which he was traveling, met with an accident at Kelodhar near Karsog at 11.45 p.m. It was alleged that the accident was caused due to rash and negligent driving of respondent No. 5 who was driving the Jeep. Beas Dev died on the spot. He was 49 years and was dealing in salt, lime and was an agriculturist and earning Rs. 6000 per month. The respondents No. 1 to 4 are the widow, children and mother of the deceased.

3. The respondent No. 5, owner-cum-driver of vehicle involved in the accident, filed reply and admitted the accident as well as death of Beas Dev. He has denied that accident took place due to rash and negligent driving on his part. He has attributed the accident to the sudden mechanical defect in the vehicle. The Insurance Company filed reply and contested the claim petition. It was pleaded

that respondent No. 5, who was driving the vehicle, was not holding a valid and effective driving licence at the time of accident. The learned Tribunal ultimately awarded a sum of Rs. 2,26,000 on 14.1.2004 to respondents No. 1 to 4, as noticed above. Respondent No. 5 and appellant were held liable to pay the amount. Hence, appeal by Insurance Company.

4. I have heard Learned Counsel for the parties and gone through the record. The following issues were framed by the Tribunal:

(i) Whether Shri Beas Dev died as a result of rash and negligent driving of respondent No. 1? OPP

(ii) If issue No. 1 is proved, to what amount the petitioners are entitled and from which of the respondent? OP Parties

(iii) Whether respondent No. 1 was not having a valid and effective driving licence, as alleged? OPR-2

(iv) Whether the vehicle was being used for the purpose for which it was not permitted, as alleged? OPR-2

(v) Relief.

The Learned Counsel for the appellant has addressed arguments only on Issue No. 4. He has submitted that Ext. RA is the policy of the vehicle involved in the accident and the period of coverage was from 12.2.2000 to 11.2.2001. The policy Ext. RA of the vehicle involved in the accident has not been denied by any party during the course of the hearing of the appeal. The perusal of policy Ext. RA would show that the vehicle was insured as goods vehicle. The question is whether in these circumstances respondents No. 1 to 4/claimants are entitled to compensation from Insurance Company?

5. Mr. Dushyant Dadwal, Learned Counsel for respondents No. 1 to 4, has submitted that scope of Issue No. 4 is the user of the vehicle. He has submitted that the pleaded case of the insurer is that the vehicle was being plied as taxi. Therefore, Issue No. 4 is to be considered in that context. The learned Counsel for the appellant has submitted that it is not the case of the respondents No. 1 to 4/claimants that deceased was travelling in the vehicle as owner of the goods or representative of owner of goods. It is also not the case of respondents No. 1 to 4/claimants that the deceased was travelling in the vehicle involved in the accident in the capacity as driver or conductor or as labourer. It is settled law that in goods vehicle passengers are not allowed. The vehicle involved in the accident admittedly was insured as a goods vehicle vide policy Ext. RA and this fact has not been denied by Mr. Rajinder Kanwar, Learned Counsel for owner-cum-driver of the vehicle involved in the accident.

6. In National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , the question for consideration before, the Apex Court was whether an insurance policy in respect of a goods vehicle would also cover gratuitous passengers, in view of the

legislative amendment in 1994 to Section 147 of Motor Vehicles Act, 1988. The Apex Court in Para-20 has held as follows:

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

In National Insurance Co. Ltd. Vs. Cholleti Bharatamma and Others, , the question before the Apex Court was liability of the Insurance Company to indemnify the owner of the vehicle in respect of death of passengers travelling in goods carriage and the Supreme Court in Para-10 has held as follows:

The effect of 1994 amendment came up for consideration in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , wherein this Court following New India Assurance Co. Ltd. Vs. Asha Rani and Others, , opined that the words ''injury to any person'' would only mean a third party and not a passenger travelling on a goods carriage whether gratuitous or otherwise. The question came up for consideration again in National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, wherein upon taking into consideration a large number of decisions, the said view was reiterated.

7. The pleaded case of respondents No. 1 to 4/claimants is that deceased was travelling in the vehicle but there is no pleading in the petition that the deceased was travelling in the vehicle as owner of the goods or as representative of owner of goods. The vehicle involved in the accident was a goods vehicle, therefore, in view of Baljit Kaur and Cholleti Bharatamma (supra), the appellant is not liable to indemnify the owner of the vehicle involved in the accident. The learned Tribunal has not properly appreciated the material on record while fixing liability of the award on the insurer, therefore, the impugned award fixing liability on the insurer is liable to be set aside.

8. No other point was urged.

9. The result of above discussion, the appeal is allowed, award dated 14.1.2004 passed by Motor Accident Claims Tribunal, Mandi in Claim Petition No. 24 of 2001 is modified and the appellant is exonerated of the liability to pay any amount to the respondents No. 1 to 4/claimants. The respondent No. 5 owner-cum-driver of the vehicle No. HP-28-1156 shall pay the entire award amount to respondents No. 1 to 4/claimants along with interest and cost in the manner as held by learned Tribunal in the award dated 14.1.2004. No costs.