
(1999) 06 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No. 21 of 1991 and Cross-objections No. 185 of 1991

United India Insurance Co. Ltd.

APPELLANT

Vs

Ganga Ram and Others

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Citation : (2000) 2 ACC 609 : (2000) ACJ 115 : (1999) 2 ShimLC 387

Hon'ble Judges : Surinder Sarup, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Devyani Sharma, for the Appellant; Trilok Chauhan, Sunil Chaudhary and Rajiv Sharma, for the Respondent

Final Decision : Allowed

Judgement

Surinder Sarup, J.—This judgment will dispose of F.A.O. (MVA) No. 21 of 1991 and Cross-objections No. 185 of 1991 as both of them are directed against the award dated 1.12.1990 of the Motor Accidents Claims Tribunal (II), Mandi, H.P. (hereinafter to be referred as "the Tribunal"). The appeal is at the instance of United India Insurance Co. Ltd. which was arrayed as respondent No. 3 before the Tribunal while the cross-objections have been filed on behalf of the claimants.

2. The facts out of which these proceedings arise are that Sant Ram deceased was driving a scooter on 2.12.1988 bearing registration No. HPM 853 at a place called Khalyar. One Dile Ram was sitting behind as pillion rider. While Sant Ram was thus driving the said scooter, it was struck from behind by another scooter alleged to have been driven in a rash and negligent manner by one Mittar Dev (respondent No. 1 before the Tribunal) which was bearing registration No. HID 1652. As a result of this accident, the said Sant Ram fell down and sustained injuries. He was immediately taken to the District Hospital, Mandi, where he was declared dead. Post-mortem of dead body was carried out on the same day, i.e., 2.12.1988. It was in these circumstances that the widow and three sons of the deceased Sant Ram filed the claim petition.

3. Respondent Nos. 1 and 2 being the driver and owner of the scooter in question filed a joint written statement and pleaded that the accident was due to the fault of Sant Ram deceased. As per their version, he was going on the scooter in question to Khalyar and was being followed by Mittar Dev respondent No. 1 before the Tribunal. Near the workshop at Khalyar, Sant Ram at once turned his scooter towards the right side of the road without giving any prior signal, as such, both the scooters collided although the scooter being driven by the respondent No. 1 Mittar Dev was at a low speed and was being driven in a cautious manner. Due to the sudden turn towards the right side of the road of the scooter being driven by Sant Ram, Mittar Dev, the respondent No. 1 before the Tribunal could not apply the brakes in time. On this version of the accident, respondent No. 1 before the Tribunal has sought to absolve himself from any liability. It was also pleaded in the written statement that at the relevant time, Sant Ram deceased was not wearing the helmet.

4. The insurance company being respondent No. 3 before the Tribunal in its separate written statement took up the plea that it is not liable to indemnify the claim for compensation because at the time when the accident took place, respondent No. 1 was not having in his possession a regular driving licence. Respondent No. 2 being the owner of the scooter in question wrongly allowed it to be driven by the respondent No. 1 without a valid driving licence which was in contravention of the insurance policy. The plea of non-joinder of necessary party, i.e., insurance company with which the scooter driven by Sant Ram had been insured was also taken in the written statement of the respondent No. 3.

5. On the above pleadings of the parties, the Tribunal framed the following issues:

(1) Whether Sant Ram died in an accident which took place on 2.12.1988 at Jawaharnagar, Mandi at 2.30 p.m. on account of the rash and negligent driving of scooter bearing registration No. HID 1652 by respondent No. 2 Khem Chand. If so its effect? .. .OPP

(2) If issue No. (1) is proved whether the petitioners are entitled to the compensation of Rs. 6,00,000? ...OPP

(3) Whether the respondent No. 3 is not liable to pay the compensation because the insurance company with which the scooter being driven by Sant Ram was insured has not been impleaded?

(4) Relief.

6. Issue No. (1) was decided in favour of the claimants holding thereby that the accident occurred on account of rash and negligent driving of the scooter bearing registration No. HID 1652 by respondent No. 1. Under issue No. (2), the Tribunal has held the claimants to be entitled to an amount of Rs. 2,88,000 to which an amount of Rs. 3,000 is to be added for the loss of love and affection and Rs. 2,000 towards funeral expenses. Issue No. (3) was decided against the insurance company, i.e., respondent No. 3 before the Tribunal and appellant before us. On

these findings, the Tribunal has made an award of Rs. 2,93,000 in favour of the claimants and against the respondents jointly and severally along with costs as well as the interest at the rate of 12 per cent per annum from the date of claim petition, i.e., 7.2.1989 till the date of payment of the amount. The Tribunal has apportioned the amount thus awarded in the manner that a sum of Rs. 1,25,000 has been awarded to the widow of the deceased while the rest of the compensation amount shall be shared equally by the three sons of the deceased.

7. The only point which has been urged by the learned counsel for the insurance company in the present appeal is that Mittar Dev, respondent No. 5 here, was driving the scooter in question without a valid driving licence and thus the terms and conditions of the insurance policy, Exh. R-3, have been contravened. In support of her submission Ms. Devyani Sharma, learned counsel for the appellant insurance company has cited a case of the Apex Court, i.e., New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, and a decision of the Division Bench of this court, i.e., National Insurance Co. Ltd. Vs. Vidya Devi and Others,

8. In order to appreciate the submission of the learned counsel, it would be appropriate to refer to the insurance policy, Exh. R-3. According to the terms thereof, a person holding a valid licence was entitled to drive the scooter in question. In this connection, Mittar Dev, the person driving the scooter in question at the time of the accident in his examination-in-chief has deposed that the registration certificate of scooter bearing No. HID 1652 is Exh. R-1, copy of driving licence is Exh. R-2 and the insurance policy is Exh. R-3. In his cross-examination on behalf of the insurance company, he has admitted (volunteered) that at the time of the accident, he was holding a learner's licence. The Tribunal in para 18 of its award has observed as follows:

In the present case, the insurance company did not produce any evidence regarding the fact that Mittar Dev, RW 1, respondent did not possess a valid driving licence at the relevant time. The said fact stands clarified by the statement of RW 1 whose statement has been relied upon by all the respondents to the effect that he did possess a learner licence and after the expiry of the date of the learner licence he was issued a regular licence the copy of which is on the record in the shape of Exh. R-2.

9. The Apex Court in the case reported as New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, has held that a person would be regarded as being duly licensed only if he has obtained a licence under Chapter II of the Motor Vehicles Act and a person who has obtained a temporary licence which enables him to learn driving cannot be regarded as having been duly licensed. It has further held as follows:

Apart from the fact that a learner having such a licence would not be regarded as duly licensed, the aforesaid clause in the insurance policy makes it abundantly clear that the insurance company, in the event of an accident, would be liable

only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". This clause specifically provides that even if respondent No. 3 had held a current learner's licence at the time of the accident, the appellant would not be liable. In the present case it is clear that the respondent No. 3 did not have a permanent driving licence before the date of the accident and he had held only a learner's licence and it lapsed nearly two years before the accident. The High Court observed that the Act did not contemplate a "permanent driving licence" because a driving licence is valid only for a certain period after which it has to be renewed. This may be so, but the use of the words "permanent driving licence" in the insurance policy was to emphasise that a temporary or a learner's licence holder would not be covered by the insurance policy. The intention and meaning of the policy clearly is that the person driving the vehicle at the time of the accident must be one who holds a "driving licence" within the meaning of Section 2 (5-A) of the Act. This being so, we are unable to agree with the conclusions of the High Court that the appellant was liable to pay the amount which had been awarded in favour of respondent No. 1.

10. This court in its decision reported as *National Insurance Co. Ltd. Vs. Vidya Devi and Others*, came to the conclusion that on the basis of the evidence on record in that case, the driver was holding a learner's licence at the time of accident and thus the liability of the insurance company as per stipulated condition, could not be attracted.

11. It is thus clear that in view of the ratio in the case of *New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, of the Apex Court, the scooter in question in the present case was being driven by respondent No. 5 without a valid driving licence, in contravention of the terms and conditions of the insurance policy, Exh. R-3, according to which only a person holding valid licence was entitled to drive the scooter in question. There is thus considerable force in the submission of the learned counsel for the appellant insurance company. In this view of the matter, there is no escape from the conclusion that the appellant insurance company is not liable to indemnify the owner of the scooter in question for the compensation awarded to the claimants in the present case.

12. In fairness to the learned counsel for respondent Nos. 5 and 6, i.e., the driver and owner respectively of the scooter in question, it may be mentioned that he has placed reliance on a number of rulings in support of his submission that the appellant insurance company cannot be absolved of its liability for compensation in the present case. They are:

- (i) *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC).
- (ii) *Sohan Lal Passi Vs. P. Sesh Reddy and others*,
- (iii) *B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan*,
- (iv) *Chotu Lal v. Chamali Bai* 1997 ACJ 508 (Rajasthan).

(v) V. Mepheron Vs. Shiv Charan Singh,

(vi) Chanchalben v. Shailesh Kumar Pandurao Thakore 191A ACJ 393 (Gujarat).

(vii) United India Insurance Co. Ltd. v. Tilak Ram 1985 ACJ 481 (HP).

13. Insofar as decision of the Gujarat High Court in Chanchalben v. Shailesh Kumar Pandurao Thakore 1974 ACJ 393 (Gujarat), is concerned, the same cannot be deemed to lay down the correct law in view of the decision of the Apex Court in the case of New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, As regards decision of this court in United India Insurance Co. Ltd. v. Tilak Ram 1985 ACJ 481 (HP), the same has been held to have been incorrectly decided in view of decision of the Apex Court in New India Assurance Co. Ltd. (supra).

14. On going through the reports of the other rulings relied upon by the learned counsel for respondent Nos. 5 and 6 and referred to above, we have no hesitation in holding that each one of them is distinguishable on facts of the present case.

15. In so far as the cross-objections filed on behalf of the claimants are concerned, we find that there is no error in the impugned award in respect of the quantum of compensation which has been awarded to them. The evidence on record indicates that the deceased Sant Ram was 43 years of age at the time of his death due to accident. Exhs. PW-7/A to PW-7/D may be referred to in this connection. These documents also indicate that the deceased was a contractor and an income tax assessee. Taking the totality of the facts as brought out from the evidence on the record, we are of the considered view that the amount of compensation awarded by the Tribunal below in the present case is just and proper and no further enhancement is called for.

16. For the reasons recorded above, the appeal of the appellant insurance company is accepted and the impugned award is set aside to the extent that the appellant insurance company is not liable to indemnify the owner (respondent No. 6) of the scooter in question for the compensation awarded to the claimants, who shall also be at liberty to execute the award against the driver of the scooter in question (respondent No. 5). The cross-objections filed by the claimants, however, are dismissed being without any merit. Even otherwise, the cross-objections are admittedly not maintainable in the appeal filed by the appellant insurance company. The parties are left to bear their own costs.

17. Before parting with this judgment, we consider it our bounden duty to issue appropriate directions as regards the award amount deposited in the Registry of this court. We find that the appellant insurance company had deposited an amount of Rs. 25,000 and further an amount of Rs. 3,12,058 separately and the same was ordered to be invested in the Fixed Deposit Receipts periodically during the pendency of the appeal before this court. Out of the same, some amount stands disbursed in favour of the respondents-claimants under orders of

the court. It is manifest that the disbursed amount must have been utilized by the respondents-claimants taking it as their right. Therefore, it will not be in the interest of justice, equity and good conscience to direct them to refund that amount to the appellant insurance company. However, insofar as the balance award amount lying in the Fixed Deposit Receipts is concerned, it is ordered to be refunded to the appellant insurance company along with up-to-date interest. It will be open to the appellant insurance company to recover the amount already disbursed in favour of the respondents-claimants from the owner as well as the driver of the scooter in question in accordance with law.