(2016) 07 SHI CK 0062

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No. 19 of 2011

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Gianti Gupta RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2016) LatestHLJ(HP) 1069

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Manish Gupta, Advocate, for the Respondents No. 12 and 13; Nemo, for the Respondents No. 10 and 11; Mr. Vivek Darhel, Advocate, for the Respondents No. 1 to 9; Mr. Ashwani K. Sharma, Senior Advocate, with Mr. Nishant Kumar, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J. - This appeal is directed against the judgment and award dated 1.9.2010, made by the Motor Accident Claims Tribunal, Solan in M.A.C. Petition No. 20-S/2 of 2007, titled Gianti Gupta and others v. Shri Ram Lal and others, whereby compensation to the tune of Rs. 5,81,600/- with interest @ 9% per annum came to be awarded in favour of the claimants and against the respondents and insurer came to be saddled with the liability, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

2. The claimants, driver and owner have not questioned the impugned award on any ground, thus it has attained finality so far it relates to them.

3. The insurer has questioned the impugned award on the ground that the deceased was a gratuitous passenger and the insured has committed wilful breach. Thus, the Tribunal has fallen in an error in saddling it with the liability.

4. The only question to be determined in this appeal is whether the Tribunal has

rightly directed the insurer to satisfy the award? The answer is in affirmative for the following reasons.

5. The claimants being the victims of a vehicular accident, filed claim petition before the Tribunal, for the grant of compensation to the tune of Rs. 30 lacs, as per the break-ups given in the claim petition, on the ground that the driver, namely, Rajinder Gupta, on 7.3.2007, at National Highway No. 22 at Parwanoo, had driven the tractor bearing registration No. HP-12-4715, rashly and negligently, and hit the deceased, who was standing by the side of the road to answer the call of nature, sustained the injuries and succumbed to the same.

6. Respondents contested and resisted the averments contained in the claim petition by filing separate replies.

7. Following issues were framed by the Tribunal on 5.11.2007:

(i) Whether the deceased had died on account of injuries caused due to rash/ negligent driving of the tractor by respondent No. 3? OPP

(ii) If issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled and from whom? OPP

(iii) Whether the deceased was a gratuitous passenger and his risk was not covered by the insurance policy purchased by respondent No. 1 and 2?

OPR-4.

(iv) Whether the respondent No. 3 was not holding valid and effective driving licence at the time of accident? OPR-4.

(v) Whether the petition is bad for non-joinder of necessary parties? OPR-4.

(vi) Relief.

8. Claimants No. 1 and 2 appeared in the witness-box as PW1 and PW2 respectively. On the other hand respondents examined as many as 11 witnesses and have also placed the documents on record.

9. The Tribunal, after scanning the evidence held that the claimants have proved that the driver, namely, Rajinder Gupta has driven the offending vehicle, i.e., tractor rashly and negligently and caused the accident in which the deceased, who was standing by the side of the road, to answer the call of nature, sustained the injuries and succumbed to the injuries.

10. I have gone through the impugned award, evidence and the record. The Tribunal has rightly recorded the findings to the effect that the driver, namely, Rajinder Gupta, had driven the offending vehicle rashly and negligently and hit the deceased, who was standing by the side of the road to answer the call of nature, sustained the injuries and succumbed to the same. Thus, the findings returned on issue No. 1 are upheld.

11. Before I deal with issue No. 2, I deem it proper to deal with issues No. 3 to 5 at the first instance. It was for the insurer to plead and prove that the deceased was travelling in the tractor as a gratuitous passenger and risk was not covered.

12. The positive case of the claimants, as discussed herein above, is that the deceased, who was standing by the side of the road to answer the call of nature, was hit by the tractor and it is not specifically denied by the owner and driver. Even the owner and driver have not questioned the impugned award. The claimants have proved that the deceased was not travelling in the tractor but was standing by the side of the road to answer the call of nature, was hit by the tractor, sustained injuries and succumbed to the injuries. Thus, it cannot be said and held that the deceased was a gratuitous passenger. The Tribunal has recorded the findings and discussed statements of all the witnesses, including the officers from the Insurance Company and police, are well reasoned, require no interference. Accordingly, the findings returned by the Tribunal on issue No. 3 are upheld.

13. Issue No. 4. It was for the insurer to plead and prove that the driver was not having a valid and effective driving licence at the time of accident, has not led any evidence to that effect. However, the claimants have proved the investigation report Ext. PW6/A which does disclose that the driver was having a valid and effective driving licence w.e.f 22.3.1999 to 24.7.2013. The Tribunal has rightly returned the findings on issue No. 3, are accordingly, upheld.

14. Issue No. 5. It was for the insurer to plead and prove that the claim petition suffers from non-joinder of necessary parties, has not led any evidence. Even otherwise, this issue has not been called for. Accordingly, the findings returned on this issue are upheld.

15. Issue No. 2. The adequacy of compensation is not in dispute. The factum of insurance is admitted. Having said so, the findings returned by the Tribunal on issue No. 2, are upheld.

16. The insurer is directed to deposit the amount, within six weeks from today in this Registry, if not already deposited. On deposit, the entire amount be released to the claimants, strictly, in terms of the conditions contained in the impugned award, through payees'' cheque account or by depositing the same in their bank accounts.

17. Viewed thus, the impugned award is maintained and the appeal is dismissed.

18. Send down the record forthwith, after placing a copy of this judgment.