

(2015) 10 SHI CK 0060
In the High Court Of Himachal Pradesh
Case No : FAO No. 443 of 2008

United India Insurance Company	Vs	APPELLANT
Sohan Singh and Others		RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2015) 10 SHI CK 0060

Hon'ble Judges : Mansoor Ahmad Mir, C.J.

Bench : Single Bench

Advocate : P.S. Chandel, Advocate, for the Appellant; Aman Sood, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. This appeal is directed against the award dated 28th May, 2008, passed by the Motor Accidents Claims Tribunal, Mandi, H.P. (hereinafter referred to as "the Tribunal") in Claim Petition No. 40 of 2006, whereby compensation to the tune of Rs. 4,61,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants-respondents No. 1 & 2 herein and the insurer came to be saddled with liability (for short, "the impugned award"), on the grounds taken in the memo of appeal.

2. The claimants, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far as it relates to them.

3. Only, the insurer-Insurance Company has questioned the impugned award on the grounds, which are mentioned in para-6 of the appeal. It is apt to reproduce para-6 of the appeal herein:-

"6. That Ld. Tribunal while passing the impugned award has not at all appreciated and considered the plea set up on its behalf to the effect that since

both the vehicles i.e. Tractor no HP-31-1286 and Motor Cycle No. HP-32-1274 were involved in the accident and rash and negligent in causing the accident. Accident has taken place due to the contributory negligence on the parts of the drivers of both the vehicles. Ld. Tribunal should have fastened the liability on the owners of both the vehicle equally as both of them has contributed in causing the accident in equal proportion. Ld. Tribunal despite of holding the tractor driver rash and negligent in causing the accident, has wrongly, illegally and incorrectly has not fastened him of any liability of compensation. Ld. Tribunal has committed material irregularity and illegality by not foisting any liability on the owner and driver of the tractor despite of being holding them rash and negligent. Since the impugned award passed by Ld. MACT is based on surmises and conjunctures and the same being contrary to law, material illegality and irregularity has been committed and as such award deserved to be quashed and set aside and the proportionate liability on the owner of the tractor may kindly be imposed upon them."

4. Learned Counsel for the appellant-insurer argued that the claim petition was not maintainable for the reason that the owner and the driver of the tractor were not impleaded as party respondents in the claim petition and the accident was the outcome of the contributory negligence of the drivers of tractor and motor cycle.

5. The claimants had filed the claim petition before the Tribunal for grant of compensation to the tune of 10,00,000/-, as per the breaks-up given in the claim petition, on the ground that driver, namely, Labh Singh had driven the offending vehicle-motor cycle bearing registration No. HP-32-1274, rashly and negligently, on 7.2.2006, at about 6.10 p.m., at Naulakha, P.O. Kanaid, Tehsil Sundernagar, District Mandi, HP, struck the motor cycle against the rear portion of trolley of tractor No. HP-31-1236, caused injuries to Tej Singh and succumbed to the said injuries.

6. The respondents resisted and contested the claim petition on the grounds taken in the memo of their replies.

7. Following issues came to be framed by the Tribunal:

"1. Whether Tej Singh died on account of motor vehicle accident which took place on 7.2.2006, at about 6:10 P.M. at place Naulakha, when the deceased was pillion rider on motor cycle No. HP-31-1274, which was being driven by respondent No. 2, as alleged?

...OPP

2. If issue No. 1 is proved, as to what amount of compensation, the petitioners are entitled and from whom?

....OPP

3. Whether the claim petition is being bad for misjoinder of parties as alleged?

....OPR-2

4. Whether the deceased was unauthorized passenger being pillion rider on motor cycle No. HP-32-1274 and as such not covered by the policy of the insurance as alleged?

...OPR-3

5. Whether the respondent No. 2 was not holding a valid and effective driving licence to drive motor cycle and motor cycle was being driven in violation of the terms and conditions of the insurance policy as alleged?

.....OPR-3

6. Relief"

8. Parties have led evidence.

9. The Tribunal, after scanning the evidence, oral as well as documentary, held that the accident was outcome of the contributory negligence and the claim petition is maintainable.

10. The claimants have rightly filed the claim petition against one of joint tortfeasors and the claimants are entitled to compensation from any of them. It is apt to reproduce paras 20 & 22 of the impugned award herein:-

"20. It was strenuously urged on behalf of the respondent that the petitioners have not intentionally impleaded the driver of the tractor as co respondent so as to claim compensation from the insurance of the motor cycle i.e. respondent No. 3. To my mind from the evidence on the record it is clearly established that the accident has arisen out of the use of both motor cycle as well as tractor resulting in injury to Tej Singh who ultimately succumbed to the said injuries. It is just possible that the petitioner in order to get compensation easily from the insurance company of the motor cyclist has only impleaded the owner of the motor cycle as well as its insurer as party. It has been held in the case of Karnataka State Road Transport Corporation Vs. Arun alias Aravind, that where the accident has taken place due to use of two vehicles their liability is joint and several. The claimants are at liberty to claim compensation from either of the joint tortfeasors. The provisions of section 163-A, in the Act were enacted with a view to provide speedy remedy to the claimants and they have been given choice to claim compensation from either of the joint tortfeasors. Similar view has been taken in the case of Smt. Sushila Bhadoriya and Others Vs. M.P. State Road Transport Corporation and Another, .

21.

22. No doubt there are allegations in the FIR against the tractor driver but even if they are taken to be true the same would not absolve the respondents from their liability under the law as use of motor cycle in the accident stands fairly established. This issue is decided accordingly."

11. The Apex Court in *Khenyei Vs. New India Assurance Co. Ltd. and Others* has laid down the same principle. It is apt to reproduce para-18 of the aforesaid judgment herein:

"18. This Court in *National Insurance Co. Ltd. Vs. Challa Bharathamma and Others*, & *Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others*, has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law. What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in

independent proceedings after passing of the decree or award."

12. Learned Counsel for the appellant argued that owner and driver of the tractor were not added as party respondents in the claim petition and they be also saddled with liability.

13. Keeping in view the ratio of the law laid down by the apex Court in the judgment, supra, I am of the considered view that the appellant has a right to recover half of the award amount.

14. Accordingly, the impugned award is upheld and the appeal is dismissed. However, the insurer is at liberty to seek appropriate remedy.

15. The Registry is directed to release the compensation amount in favour of the claimants, strictly as per the terms and conditions, contained in the impugned award.

16. Send down the records after placing a copy of the judgment on the file of the claim petition.