(2011) 09 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : FAO No. 316 of 2006

United India Insurance Company Limited — APPELLANT

Vs

Smt. Sushma Devi and Others — RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : (2012) 1 TAC 276

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This appeal by the Insurance Company is directed against the award dated 30.06.2006 passed by the learned Motor Accident Claims Tribunal, Fast Track Court, Hamirpur.

2. The claim petition arises out of accident of bus No. HP-22-4295. Learned Counsel for the parties submit that this matter is squarely covered by the judgement of this Court rendered in FAO No. 21 of 2006 and other connected matters decided on 10.09.2009. It would be pertinent to mention that in those appeals the awards were not disturbed. However, as far as the claim with regard to the liability is concerned the appeal of the Insurance Company was allowed and the Insurance Company was permitted to amend the pleadings. In this case like in the earlier cases the Insurance Company during the proceedings before the learned Tribunal had filed an application for amendment of the written statement and impleading certain parties. According to the Insurance Company Vijay Kumar was not the actual owner of the vehicle and he had sold the said vehicle to some other person and the vehicle finally had been transferred in favour of Shri Rakesh Kumar S/o Sh.Parkash Chand R/o Tika Thana Darogan, Tehsil and District Hamirpur and he was a necessary party to the petition. This application was rejected by the learned Tribunal.

3. In the judgement dated 10.09.2009 in FAO No. 21 of 2006 and other connected matters this Court held as follows:

I am constrained to observe that the learned Tribunal virtually went into the merits of the amendments sought. From the record of the case, it is apparent that Vijay Kumar and Vikram Singh in the original replies filed by them before the learned Tribunal themselves took the plea that they had sold the vehicle to Sh.Purshotam Chand on 1.5.2002. They had also annexed a copy of the agreement with the reply. The Insurance Company and these persons had filed reply(s) on the same date and during the course of evidence also Vijay Kumar stated that he had sold the vehicle on 1.5.2002. Therefore, the amendment(s) sought for by the Insurance Company could not have been rejected. The application(s) for amendment was made within 6-7 months from the filing of the original written statement. At the time of allowing the amendment, the Court is not required to look into the merits of the same.

Therefore, I am of the considered view that the amendment should have been allowed and the Insurance Company should have been allowed to contest the matter on the defence raised by it in the amended reply. It is however made clear that this Court is not expressing any opinion on the merits of the plea raised by the Insurance Company and this has to be decided by the learned Motor Accidents Claims Tribunal after giving both the owner of the vehicle and the Insurance Company a reasonable opportunity of leading evidence.

The next question which arises is whether the case should be remanded as a whole or should this Court decide the other matters raised in this case. Admittedly as far as third party''s liability is concerned, the Insurance Company would be liable to pay the amount. Even if the issues raised by it are decided in its favour, it can recover the amount from the owner. The application(s) filed by the Insurance Company u/s 170 was allowed by the learned Tribunal and it was allowed to contest the claim on all grounds. There is no reason why the claimants who have no concern with the dispute between the Insurance Company and the owner, should be forced to face another round of litigation. Therefore, I feel that the appeal should be remanded only to the limited extent of deciding the dispute between the Insurance Company and the owner and other issues can be decided in these appeals.

4. The appeals were disposed of in the following terms:

In view of the above discussion, the appeals and the cross objection filed by the claimants are allowed in the aforesaid terms. The appeals filed by the Insurance Company are allowed to the limited extent that the application(s) for amendment and impleading of parties filed by it shall be deemed to be allowed. The learned Tribunal shall only decide the questions arising out of these applications and shall not embark into a decision on the quantum or negligence which has been decided by this Court. No notice shall be issued to the claimants and only the dispute interse the Insurance Company, the owner and the alleged new owners of the vehicles shall be decided. The learned Tribunal shall frame the issues arising out of the amended pleadings and decide the same after giving reasonable opportunity to the parties to lead evidence.

5. The present appeal being identical is also disposed of in the aforesaid terms. The Insurance Company, owner and the driver who are represented before this Court are directed to appear before the learned Motor Accident Claims Tribunal on 27th October, 2011. The learned Tribunal is directed to issue notices to the freshly impleaded parties and dispose of all the issues as early as possible and in any event not later than 31st May, 2012.

No order as to costs.

