(2015) 10 SHI CK 0101

In the High Court Of Himachal Pradesh

Case No : FAOs Nos. 462 and 528 of 2009

United India Insurance Company Ltd. and Others APPELLANT

Vs

Simlo Devi and Others RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2015) 10 SHI CK 0101

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

Bench : Single Bench

Advocate : Ashwani K. Sharma, Senior Advocate and Monika Shukla, Advocate, for the Appellant; Sanjay Jaswal, Advocate, for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.

1. Both these appeals are outcome of the judgment and award, dated 22.08.2009, made by the Motor Accident Claims Tribunal (I), Kangra at Dharamshala (for short "the Tribunal") in M.A.C.P. No. 12-K/II-2008, titled as Simlo Devi and another versus Shashi Paul and others (for short "the impugned award"), thus, I deem it proper to determine both these appeals by this common judgment.

2. By the medium of FAO No. 462 of 2009, the insurer has questioned the impugned award on the ground of adequacy of compensation.

3. The owner-insured has questioned the impugned award by the medium of FAO No. 528 of 2009 on the ground that the Tribunal has fallen in an error in saddling him with liability.

4. The claimants and the driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

5. The claimants have sought compensation, as per the break-ups given in the claim petition on the ground that they have lost their son in a vehicular accident, which was caused by the driver, namely Shri Binesh Thapa, while driving van

bearing registration No. HP-01-0769, rashly and negligently on 08.02.2008 at about 8.15 P.M.

6. The claim petition was resisted by the respondents on the grounds taken in the respective memo of objections.

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

"1. Whether Sh. Ajay Kumar died on account of rash and negligent driving of vehicle No. HP-01-0769 by respondent No. 1? OPP

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

3. Whether the claim petition is not maintainable against the respondent No. 2? OPR-2

4. Whether the claim petition is bad for misjoinder of necessary parties? OPR-2

5. Whether respondent No. 1 had not bee in possession of valid and effective driving licence if so with what effect? OPR-3

5. Relief."

8. Parties have led evidence.

9. The findings returned by the Tribunal on issues No. 1, 3, 4 ad 5 are not in dispute. Accordingly, the findings returned on the said issues are upheld.

10. Learned Senior Counsel for the insurer argued that the route permit was not transferred in the name of the transferee, thus, the owner-insured has committed a breach and the amount awarded is excessive.

11. I have gone through the documents and the evidence. Even if the vehicle is transferred and it is not brought to the notice of the insurer, the insurer cannot claim exoneration, as held by the Apex Court and this Court in a series of cases.

12. Even otherwise, there was a route permit, but was not transferred in the name of the transferee, cannot be said to be violation of the terms and conditions of the insurance policy.

13. Having said so, the Tribunal has fallen in an error in holding that the owner-insured has committed breach and granting right of recovery to the insurer.

14. The amount awarded is not in accordance with the Second Schedule appended with the Motor Vehicles Act, 1988 (for short "the MV Act") read with the ratio laid down by the Apex Court in the case titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and upheld by a larger Bench of the Apex Court in the case titled as Reshma Kumari and Others Vs. Madan Mohan and Another, , for the following reasons:

15. In para 17 of the impugned award, the income of the deceased has been

taken as Rs. 3,000/- per month, which has not been questioned by the claimants, is accordingly upheld. However, the Tribunal has fallen in an error in deducting one third towards the personal expenses of the deceased as in terms of the judgments (supra), 50% was to be deducted as the deceased was a bachelor. Thus, it is held that the claimants have suffered loss of income to the tune of Rs. 1500/- per month.

16. The Tribunal has also fallen in an error in applying the multiplier of 17, as the multiplier of ''15'' was to be applied in terms of the mandate of the Second Schedule appended with the MV Act read with the judgments (supra).

17. Viewed thus, the claimants are held entitled to compensation to the tune of Rs. 1500/- x 12 x 15 = Rs. 2,70,000/- under the head ''loss of income/ dependency''. The compensation awarded under the heads ''loss of expectancy of love & affection'' to the tune of Rs. 10,000/-, ''funeral & conveyance'' to the tune of Rs. 15,000/-, ''medical expenses to the tune of Rs. 29,781/- and ''attendant charges'' to the tune of Rs. 5,000/- is upheld.

18. Having said so, the claimants are held entitled to total compensation to the tune of Rs. 2,70,000/- + Rs. 10,000/- + Rs. 15,000/- + Rs. 29,781/- + Rs. 5,000/- = Rs. 3,29,781/- with interest as awarded by the Tribunal.

19. In the above backdrop, the appeal of the insured is allowed, the appeal of the insurer is partly allowed and the impugned award is modified, as indicated hereinabove.

20. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award after proper identification.

21. Send down the record after placing copy of the judgment on each of the Tribunal''s file.