
(2015) 09 SHI CK 0144

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order (MVA) No. 374 of 2008

United India Insurance Company Ltd.

APPELLANT

Vs

Meena Devi and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304-A, 337

Citation : (2015) 3 ShimLC 1558

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

Bench : Single Bench

Advocate : Ashwani K. Sharma, Senior Advocate and Monika Shukla, Advocate, for the Appellant; Anita Jalota, Proxy Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. Challenge in this appeal is to the judgment and award dated 27.3.2008, made by the Motor Accident Claims Tribunal, Fast Track Court, Kangra at Dharamshala, in MACP RBT No. 42-K/11/2005, titled Meena Devi and another v. Desh Raj and others, for short "the Tribunal", whereby compensation to the tune of Rs. 1,80,000/- was awarded in favour of the claimants and insurer came to be saddled with the liability, hereinafter referred to as "the impugned award", for short. Claimants, owner and drivers have not questioned the impugned award on any ground, thus it has attained finality so far it relates to them.

2. The insurer has questioned the impugned award on the grounds taken in the memo of appeal.

3. The learned counsel for the appellant argued that the claimants have not proved the rash and negligent driving by the driver of the offending vehicle thus, the insurer was not liable to pay the compensation and the claim petition was to be dismissed and also that the driver was not having a valid and effective driving licence. Both these grounds are devoid of any force for the following reasons.

4. It is apt to reproduce the issues framed by the Tribunal herein:

1. Whether the petitioner received injuries due to rash and negligent driving of respondent No. 1? OPP

2. If issue No. 1 is decided in favour of the Petitioner, to what amount of compensation the petitioner is entitled and from whom? OPP

3. Whether the vehicle involved in the accident was driven in violation of the terms of the insurance Policy at that time and insurance company is not liable to pay the compensation? OPR-3.

4. Relief.

5. It was for the claimants to plead and prove that the driver of the offending vehicle was rash and negligent and have proved the same. The Tribunal has recorded the findings while determining issue No. 1 in paras 9 and 10 of the impugned award.

6. It is apt to record herein that FIR No. 27/2005 under Sections 279, 337 and 304-A of Indian Penal Code was registered at police station Kangra and challan was presented against the driver. Thus, it is sufficient proof to hold that the driver was driving the offending vehicle rashly and negligently. Thus, the findings returned by the Tribunal are upheld.

7. Before I deal with issue No. 2, I deem it proper to deal with issue No. 3 first. It was for the insurer to prove that the owner has committed willful breach, has not led any evidence. Thus, it can be safely held that the insurer has failed to prove that the owner has committed willful breach and cannot seek exoneration. However, I have gone through the driving licence. The driver is competent to drive the light motor vehicle, as discussed by the Tribunal in paras 17 of the impugned award. Even otherwise the offending vehicle falls within the definition of light motor vehicle, as discussed in so many cases by this Court and also by the apex Court.

8. Having said so, the findings returned by the Tribunal are upheld.

9. Viewed thus, the impugned award is upheld and the appeal is dismissed.

10. The Registry is directed to release the amount in favour of the claimants, strictly, in terms of the conditions contained in the impugned award, through payee's cheque account. Send down the record forthwith, after placing a copy of this judgment.