

(2014) 07 P&H CK 0804

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 5042 and 5043 of 2014 (O&M)

Bajaj Allianz General Insurance
Co. Ltd.

APPELLANT

Vs

Nancy Negi

RESPONDENT

Date of Decision: July 24, 2014

Hon'ble Judges: Rakesh Garg, J

Bench: Single Bench

Advocate: Vishal Aggarwal, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Rakesh Garg, J.

This judgment shall dispose of both the aforesaid appeals which have arisen out of two separate Awards passed in two claim applications i.e. MACT case No. 57 dated 17.10.2011 and MACT case No. 98 dated 17.10.2011 arising out of one and the same accident.

2. As per averments made in the claim applications, Ms. Megha Negi along with her mother, namely, Veena Negi was going from Bhawanigarh Bus Stand to village Harkrishanpura while sitting in car bearing registration No. WB-02-K-7090 which was driven by Shanker Singh Negi at fast speed in rash and negligent manner and when they reached near the area of village Faguwal, the offending car went out of control due to high speed and struck against a tree. Due to the aforesaid accident, Mrs. Veena Negi, her daughter Megha Negi and Shanker Singh Negi received serious injuries. They were brought to the hospital where Megha Negi and Shanker Singh Negi were declared brought dead. Veena Negi was referred to PGI Hospital, Chandigarh. She suffered multiple grievous injuries. According to the averments made in the claim petitions, the accident took place due to rash and negligent driving of Shanker Singh Negi.

3. In MACT case No. 98 dated 17.10.2011, Ms. Veena Negi claimed compensation to the tune of Rs. 25 lacs from the respondents on account of multiple injuries suffered by her whereas in claim petition bearing MACT No. 57 of 17.10.2011, compensation was sought by the legal heir of Ms. Megha Negi who was aged about 25 years and was B.Tech. in Electronics and was working with Lucas TVS Limited, Rewari on monthly salary of Rs. 21,000/-. In the instant case, claimants sought compensation of Rs. 30 lacs.

4. Upon notice, appellant-Insurance Company appeared and filed a written statement contesting the claim petition raising various objections further stating that the claim petition was not maintainable as Shanker Singh Negi (deceased) was owner of the offending car and after his death in the alleged accident, claimants along with Naik Tushar Negi, respondent applied for compensation under personal accident claim and own damage claim of the car in question and appellant paid Rs. 2 lacs for personal accident and Rs. 75,000/- for damage to the car. Since the claimants being the LRs of insured Shanker Singh Negi have become the owners of the vehicle of the offending car, therefore, they cannot claim compensation. On merits, it was stated that the claimants being owners of the offending car were not entitled to get compensation.

5. Respondent-Tushar Negi filed a separate written statement contesting the claim petition stating that the accident occurred due to sudden appearance of a stray cow on the road and no FIR was registered against Shanker Singh Negi for causing the accident. Even, if it is found that the accident was caused due to negligence of Shanker Singh Negi, liability to pay compensation is of appellant-Insurance Company because Shanker Singh Negi was holding a valid and effective driving licence. The offending car was duly insured with appellant-Insurance Company and there was no violation of terms and conditions of the insurance policy.

6. On the pleadings of the parties, identical issues were framed in both the claim applications.

7. After discussing the evidence on record, the Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle by Shanker Singh Negi, resulting into multiple injuries to Ms. Veena Negi and death of Megha Negi. In MACT case No. 98 of 17.10.2011, Ms. Veena Negi was held entitled to a compensation of Rs. 2,30,000/- from the appellant as well as respondent-Tushar Negi i.e. Insurer and owner jointly and severally.

8. Similarly, the claimants in MACT case No. 57 of 17.10.2011, were held entitled to a compensation of Rs. 35,42,720/- from the appellant-Insurance Co. as well as respondent-Tushar Negi, jointly and severally on account of death of Megha Negi.

9. The insurance company has challenged the aforesaid awards by filing the instant appeals before this Court.

10. Learned counsel for the appellant has vehemently argued that the Tribunal has erred in law while holding that the accident was caused due to rash and negligent driving of Shanker Singh Negi, i.e. the driver of the offending vehicle. According to the appellant, it was specifically averred and proved that claimant Veena Negi had given an affidavit (Exhibit R-10) to the police, on the basis of which a DDR was recorded saying that no one was at fault for causing the accident in question, which occurred due to sudden appearance of a stray cattle on the road and while saving the same, the car struck against the tree. Thus, the DDR along with affidavit of claimant Veena Negi which have been exhibited on record, clearly prove that there was no negligence on the part of the driver of the offending vehicle insured with appellant and that being so, the findings of the Tribunal on issue No. 1 are liable to set aside.

11. However, the arguments raised on behalf of the appellant is liable to be rejected. It is not in dispute that the appellant-Insurance Company brought on record various documents including the affidavit of Veena Negi wherein it was stated that no one was at fault for causing the accident in question. However, all the documents placed on record by the Insurance Company remained unproved. It is well settled law that mere exhibition of documents on record will not dispense with the mode of proof. The aforesaid alleged affidavit of Veena Negi and other documents relied upon by the appellant have remained unproved as no one has come forward to prove these documents on behalf of the appellant-Insurance Company. So much so, no one has stepped into the witness box on behalf of the Insurance Company even to prove formally the defence taken in its written statement and in view of the aforesaid, no fault can be found with the findings recorded by the Tribunal with regard to issue No. 1 as the accident in question is not in dispute and it has been further proved from the unrebutted statement of PW-1, Veena Negi, the insured claimant that offending vehicle was being driven by Shanker Singh Negi at fast speed in rash and negligent manner.

12. Faced with this, learned counsel for the appellant has made an attempt to argue that Insurance Company is only to indemnify the insured against the liability arising out of any accident against a third party. However, in the present case, neither the claimants nor even the deceased fell in the said category of third party and therefore, the Tribunal wrongly awarded the compensation in the present case.

13. The argument raised on behalf of the appellant is self-contradictory and liable to be rejected as in the instant case, admittedly, the offending vehicle was insured under an own damage policy and the said policy also covered the personal accident as well as occupant/passengers of the car upto its permissible limits. Moreover, the appellant has paid compensation in respect of the death of Shanker Singh Negi under own damage claim and has also made the payment towards damages to the car under the aforesaid policy.

14. No argument is raised challenging the quantum.

15. In view thereof, this Court finds no merit in these appeals, and both these appeals are dismissed.