

(2005) 09 SHI CK 0005
High Court of Himachal Pradesh
Case No: F.A.O. No. 505 of 2000

New India Assurance Co. Ltd.

APPELLANT

Vs

Lachhmi Devi and Another

RESPONDENT

Date of Decision: Sept. 9, 2005

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147, 149

Citation: (2006) ACJ 2080

Hon'ble Judges: Deepak Gupta, J

Bench: Single Bench

Advocate: K.D. Sood, for the Appellant; R.K. Gautam, Naveen Bharadwaj and Anup Rattan, for the Respondent

Judgement

Deepak Gupta, J.

This appeal by the insurance company is directed against the award of the learned Motor Accidents Claims Tribunal, Una in M.A.C. Case No. 37 of 1997; decided on 30.5.2000.

2. The facts necessary for the decision of the case are that deceased Chhaju Ram was a truck operator and businessman. He was a partner of firm Sita Ram Chhaju Ram. Sita Ram is the father of Chhaju Ram. Deceased Chhaju Ram along with Satish Kumar and Rajinder Kumar was traveling in a truck bearing registration No. HP-40 2311 which met with an accident. The truck went off the road. Chhaju Ram died on the spot. Lachhmi Devi, mother of Chhaju Ram and wife of Sita Ram and Bhagwati Devi, widow of Chhaju Ram filed a claim petition in which Sita Ram Chhaju Ram was impleaded as the respondent No. 1. Sita Ram was shown to be the owner of Sita Ram Chhaju Ram. The appellant, insurance company, was impleaded as respondent No. 2.

3. This claim petition was contested by the insurance company. A specific defence was taken that Chhaju Ram was the partner of Sita Ram Chhaju Ram and was one of

the insured persons and as such application on his behalf was not maintainable. In this behalf reference may be made to preliminary objection Nos. 2, 3 and 4 of the petition filed before the learned Motor Accidents Claims Tribunal which reads as under:

(2) That as per the provisions of Section 147 of the Motor Vehicles Act, 1988 and as per terms and conditions of insurance policy the insurance is a contract between the parties and the insurer is liable to indemnify the insured to the amount of liability incurred by him in respect of death, bodily injuries or the property damage to the third party. But in the instant case Chhaju Ram who is partner of Sita Ram Chhaju Ram and is one of the insured alleged to have been died in the motor vehicle accident and the applicants are the heirs of the insured, hence the present application is not maintainable in the eyes of law and deserves to be dismissed on this ground alone.

(3) That as the deceased was not a third party in any sense of the word, hence the present application is not maintainable before the Motor Accidents Claims Tribunal and deserves to be dismissed.

(4) That under Chapter XII of Motor Vehicles Act, 1988, the jurisdiction of the Tribunal is limited to try the claim application of the third party and pass an award against the driver, owner of the vehicle and under the contract of indemnification against the insurance company u/s 149 of Motor Vehicles Act within the limit of compulsory insurance envisaged u/s 147 of the Act. In the instant case the partner of the insured firm alleged to have been died, therefore, this Hon"ble Tribunal has no jurisdiction to try or pass an award against the respondent insurance company u/s 149 of the Motor Vehicles Act, hence the replying respondent insurance company be discharged and the claim application be dismissed.

4. From the evidence led on record, it is clear that the truck belonged to Sita Ram Chhaju Ram. It is also clear that Sita Ram Chhaju Ram was a partnership firm of which Chhaju Ram was a partner. In fact Bhagwati Devi claimant appearing as PW 1 clearly stated that Chhaju Ram was a partner of Sita Ram Chhaju Ram and that the truck was owned by the firm. It stands proved on record that the firm had only two partners, Chhaju Ram and Sita Ram. Sita Ram did not care to step into the witness-box to counter these allegations. Despite the said objection having been raised specifically as is apparent from the preliminary objections quoted hereinabove, learned Motor Accidents Claims Tribunal glossed over this objection and held that there is nothing to show how the application for compensation is not maintainable. The learned Tribunal has not dealt with this objection with the seriousness that it required. No law was considered on this important aspect of the case.

5. The most important question to be decided is whether a petition could be maintained with regard to death of a person who was a co-owner and one of the

insured persons covered by the policy. Mr. K.D. Sood, Advocate, urged that since the deceased himself was the co-owner of the truck, no claim qua his death could be filed before the Claims Tribunal. As far as the question with regard to the claim regarding the death of deceased Chhaju Ram, one of the co-owners is concerned, the question stands squarely covered by the judgment of Apex Court in *Dhanraj v. New India Assurance Co. Ltd.* 2005 ACJ 1 (SC) wherein the Apex Court held as follows:

(8) Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

6. This Court in *United India Insurance Co. Ltd. v. Chander Prabha Bhatt* 2005 ACJ 1972 (HP) has held as follows:

(13) What is the purpose of an insurance policy which is compulsorily required under the Motor Vehicles Act? The purpose clearly is that if any third party suffers damage due to an accident with a vehicle, it should be able to claim compensation from the insurance company. The intention of the legislature was that the injured party might find it very difficult to recover the amounts from the owner of the vehicle and, therefore, insurance was made compulsory so that the claimants could get their claims from the companies. However, the Act does not require that the policy necessarily cover risk to the owner himself.

(14) Another important question which arises is, can an insurance policy which is basically meant for covering risk to third parties be required to cover the loss to the owner himself? The owner in the present case has died. Supposing he was the injured. Could he have filed a claim petition against himself? Obviously not. A person cannot be both the plaintiff and defendant. The insurance company is to indemnify the owner for damages which he is liable to pay. Therefore, it is quite obvious that the insured or his legal heirs cannot file a petition against the insurance company directly. There must be first an award against the insured and only then the insurance company is liable. This is obvious from the scheme of the Act and especially Section 149 of the Act which provides that the insurance company has to satisfy judgments passed against the insured.

7. Mr. Anup Rattan has contended that in this case Chhaju Ram was not the sole owner of the truck. According to him since both, the deceased and Sita Ram were the owners, the present claim application was maintainable. In my view the fact that Chhaju Ram was a co-owner and not the sole owner of the truck, will not make any difference. The law which has been laid down by the Apex Court is that the Motor Vehicles Act does not require the insurance company to compulsorily cover the risk

to the insured person who is owner of the vehicle. Whether the insured is a co-owner or sole owner will make no difference. The Claims Tribunal, therefore, gravely erred in entertaining the claim petition regarding the death of the insured person.

8. In view of the above discussion the appeal filed by the insurance company is allowed and the award passed by the Motor Accidents Claims Tribunal, Una in M.A.C. Case No. 37 of 1997; decided on 30.5.2000 is set aside and the original claim petition dismissed as not maintainable.

9. Appeal is disposed of in the aforesaid terms with no order as to costs.