

(2004) 09 SHI CK 0001

High Court of Himachal Pradesh

Case No: F.A.O. (MVA) No. 49 of 2004

Oriental Insurance Co.
Ltd.

APPELLANT

Vs

Geeta and Others

RESPONDENT

Date of Decision: Sept. 21, 2004

Citation: (2006) ACJ 1480

Hon'ble Judges: Arun Kumar Goel, J

Bench: Single Bench

Advocate: Ashwani Sharma, for the Appellant; Onkar Jairath, for the Respondent

Final Decision: Allowed

Judgement

Arun Kumar Goel, J.

When this matter came up for consideration on 29.3.2004, notice was confined to the owner of the vehicle, i.e., Dhian Swaroop Sharma (he is reported to have died during pendency of this appeal and his sole L.R. was brought on record, vide order dated 15.9.2004).

2. Mr. Sharma, on behalf of appellant, submitted that looking to the decisions of the Apex Court in [National Insurance Co. Ltd. Vs. Baljit Kaur and Others](#), ; [Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and Others](#), and [National Insurance Co. Ltd. Vs. Swaran Singh and Others](#), , his client may be permitted to recover this amount after having indemnified the respondent Nos. 1 to 5 in terms of the impugned award dated 5.12.2003. Thus, he prayed for modification of the said award to this extent only.

3. With a view to advance the case of his client on the aforesaid line, Mr. Sharma referred to the statement of Geeta, RW 1, widow of the deceased. In her cross-examination, she has categorically stated that her husband had boarded the vehicle on payment of fare. However, she was unable to state the exact amount paid by her. Further, by referring to Exh. R2, he pointed out that no premium had been

charged by his client for a fare paying passenger like the deceased. Liability, if any, after amendment of Motor Vehicles Act, 1988 in 1994, of his client is qua the owner of the goods and/or his representative, besides others mentioned in IMT-13 of insurance policy, Exh. R2. Thus for a passenger like deceased in the present case, no risk is covered nor is required to be covered in Exh. R2. Admittedly, respondent Nos. 1 to 5-claimants are the dependants/legal representatives of the deceased.

4. All these pleas have been controverted by Mr. Jairath appearing on behalf of respondent No. 6, i.e., legal representative of deceased owner of the vehicle. He also placed reliance on a decision of this Court in *Oriental Insurance Co. Ltd. v. Dropti* F.A.O. No. 32 of 2004; decided on 21.6.2004. Thus, according to him, liability is only of the appellant, therefore, he prayed for dismissal of the appeal.

5. A reference to the decision of this Court in *Oriental Insurance Co. Ltd. v. Dropti*, F.A.O. No. 32 of 2004; decided on 21.6.2004, clearly shows that it is inapplicable to the facts of the present case. Because in that a person had died while travelling in vehicle not meant for carriage of the passengers. Further distinguishing feature is that in *Dropti's* case, stand of the insurance company was that the deceased was an unauthorised gratuitous passenger, whereas the deceased in the present case was admittedly a fare paying passenger as per PW 1. There is no rebuttal from the owner on this vital aspect of the case. Further similarity in both the cases is that insurance company admitted charging of premium qua non-fare paying passengers. In the face of this distinction between both the cases, no benefit can be derived on behalf of the respondent No. 6 from the judgment in *Dropti's* case (*supra*).

6. In view of the aforesaid discussion, plea urged by Mr. Sharma to modify the impugned award, holding that after payment of amount to respondent Nos. 1 to 5-claimants, the appellant will be entitled to recover the same from respondent No. 6 needs to be accepted. Ordered accordingly. Such a direction will be otherwise in consonance with the decisions of Apex Court (*supra*), as well as its earlier decisions.

7. No other point is urged. In view of the aforesaid discussion, this appeal is partly allowed and as a consequence of it, award dated 5.12.2003, in *M.A.C. Petition No. 101 of 2001*, titled *Geeta v. Oriental Insurance Co. Ltd.*, passed by the learned Motor Accidents Claims Tribunal, Chamba, is modified to the limited extent that after payment of the amount to respondent Nos. 1 to 5-claimants, appellant will be entitled to recover the said amount from respondent No. 6 without being dragged to another round of litigation by levying execution on the basis of this judgment as if it were the award of the Tribunal below. No costs.

8. At this stage, Mr. Jairath submitted that his client Prem Raj was substituted in place of the original owner of the vehicle late Dhian Swaroop Sharma. Thus, Prem Raj had incurred no personal liability. Keeping in view his character in this litigation, according to Mr. Jairath, his client will only be liable to the extent of the estate inherited by him from his late father Dhian Swaroop Sharma. Accordingly, he be

held liable to this limited extent only.

This position has been contested by Mr. Ashwani Sharma on behalf of appellant. He urged that this question needs to be left open for being decided by the Tribunal below. This plea has been raised simply to be rejected. Reason being that on the one hand the insurance company specifically admits that no personal liability has been incurred by Prem Raj, it is not understood on what principle of either civil law or jurisprudence, this plea has been urged by Mr. Sharma. Thus plea of Mr. Jairath is upheld.

9. This appeal was formally admitted and then disposed of at the joint request of the learned Counsel for the parties, as well as keeping in view the limited controversy involved in it. Amount stands deposited in the Registry of this Court. It is ordered to be remitted to Claims Tribunal below who will then inform the respondents-claimants in that behalf regarding the same.