(2010) 01 SHI CK 0086

High Court of Himachal Pradesh

Case No: FAO No. 102 of 2005

United India Insurance Company Ltd.		APPELLANT
	Vs	
Babu Ram and Others		RESPONDENT

Date of Decision: Jan. 1, 2010

Acts Referred:

- Constitution of India, 1950 - Article 142
- Motor Vehicles Act, 1988 - Section 149, 166, 168, 173

Hon'ble Judges: V.K. Ahuja, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Ahuja, J.

This is an appeal filed by the Appellant/ Insurance Company u/s 173 of the Motor Vehicles Act, hereinafter referred to as ''the Act'' against the award passed by the learned Motor Accident Claims Tribunal (I), Kangra at Dharamshala, dated 1.1.2005, passed in Claim Petition No. 20-K/II of 2003, titled Meenaku Ram and Ors. v. Jai Chand and Ors. Claim Petition No. 20-K/II of 2003 This judgment shall also dispose of the appeal filed by the owner and the driver of the vehicle challenging the findings of the learned Tribunal, whereby the Insurance Company was held entitled to recover the award amount from the owner of the vehicle.

2. Briefly stated the facts of the case are that the Respondents, hereinafter also referred to as the claimants, filed a claim petition u/s 166 of ''the Act'' for the grant of compensation. It was alleged by the claimants that the deceased was going alongwith others to Deotsidh on a pilgrimage to Baba Balak Nath Temple. They were going in a Tempo bearing No. HP 40 3713 and the driver of the said vehicle (Respondent No. 8 herein) offered them a lift upto Chambi. The vehicle was being driven by Respondent No. 8 who is the son of Respondent No. 7 (owner of the

vehicle). It was alleged that when the vehicle had covered a distance of 1 km. from Dodhamb, the driver drove the vehicle in a rash or negligent manner and it went of the road and rolled down causing injuries and death of some of the occupants of the said vehicle. The deceased died in the said accident. The claimants who are the husband and children of the deceased have alleged that the deceased was a house wife and was working as an agriculturist. The claimants alleged that the monthly income of the deceased was Rs. 5,000/- and had claimed compensation to the extent of Rs. 5.00 lacs.

3. The owner and driver of the vehicle filed reply and pleaded therein that the accident had not taken place due to the rash or negligent driving of the driver.

4. The present Appellant i.e. the Insurance Company (original Respondent No. 3) took up the plea that the driver was not holding a valid and effective driving license and that the vehicle was being driven in contravention of the terms and conditions of the insurance policy and that the deceased was a gratuitous passenger in the vehicle and as such the Insurance Company was not liable to pay any compensation.

5. The learned Tribunal framed six issues, which are reproduced as under:

1. Whether deceased Kapila Devi on 25.5.2002 while traveling on Tempo HP-40-3713 suffered injuries due to accident, caused by rash and negligent driving of Respondent No. 2 and consequently died, as alleged? OPP

2. Whether Petitioners are entitled to compensation? If so, to what amount and from which of the Respondents? OP Parties

3. Whether the Respondent No. 2 was not holding valid and effective driving license at the time of accident? OPR-3

4. Whether vehicle in question was being plied contrary to the terms and conditions of insurance policy and M.V. Act, as alleged? OPR-3

5. Whether deceased was traveling in goods vehicle unauthorisedly, if so, its effect? OPR-3

5-A Whether vehicle No. HP-40-3713 was not insured with the Respondent No. 3, as alleged? OPR-3

6. Relief.

6. The parties led their evidence and the learned Tribunal, vide its impugned findings allowed the petition for a sum of Rs. 2,10,000/- recoverable from the Insurance Company, which was held entitled to recover the amount later on from the owner in accordance with law.

7. The present appeal has been preferred by the Insurance Company on the ground that they are not liable to pay compensation since the vehicle was a goods carrier and the deceased was a gratuitous passenger.

8. I have heard the learned Counsel for the parties and have gone through the record of the case.

9. The learned Counsel for the owner and the driver, on the strength of the earlier decisions of the Apex Court, had submitted that the Insurance Company was rightly held liable to pay the amount. However, the findings of the learned Tribunal that the Insurance Company is entitled to recover the award amount from the owner of the vehicle were challenged.

10. On the other hand, the learned Counsel for the Insurance Company had submitted that in view of the latest decision of the Apex Court, the Insurance Company was not liable to deposit the amount in question in regard to a gratuitous passenger since it was a goods vehicle. It was also submitted that the said decision of the Apex Court has been clearly followed by this Court in two of its decisions, which have also distinguished the earlier law laid down by the Apex Court. The powers of the Apex Court under Article 142 of the Constitution to pass any order as well as the restrictions and the powers of this Court to issue any direction to the Insurance Company to deposit the amount firstly in case of a gratuitous passenger, all the questions raised by the learned Counsel for the owner and the driver as well as by the learned Counsel for the Appellant shall be discussed while referring to the decisions of the Apex Court as well as of this Court.

11. The learned Counsel for the owner and the driver had relied upon the decision of the Apex Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, . In that case, the vehicle in question was a goods vehicle. It was held that the owner of the vehicle shall be liable to satisfy the decree. However, their Lordships had given the directions as under:

Therefore, the interest of justice will be sub served if the Appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Accidents Claims Tribunal and the issue was decided against the owner and in favour of the insurer. Such directions have been issued having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988.

12. On the other hand, the learned Counsel for the Insurance Company had relied upon the following decisions. Reliance was placed upon the decision in The New Indian Insurance Company Vs. Darshana Devi and Others, wherein it was held that the Insurance Company, though not liable, was directed under Article 142 to satisfy the award and pay the amount in question to the claimants. It was further held that for the realization of the dues, the Insurance Company is not required to file a separate execution petition before the Tribunal.

13. The decision in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , shows that it was held by their Lordships that the passenger not being a third party, the Insurance Company was not obliged u/s 149 to satisfy the award and then have recourse to the insured owner. It was held that the High Court erred in directing the Insurance Company to satisfy the award purportedly on the basis of Swaran Singh''s case without examining whether on facts the passenger who was the Regional Manager of the Company having been provided car by the employer was a third party.

14. The decision in National Insurance Co. Ltd. Vs. Prema Devi and Others, shows that it was held that there is no liability of the insurer to pay compensation in cases of death of, or injury to gratuitous passenger traveling in goods carriage. The High Court held insurers and owners of the offending vehicles liable to indemnify the award. In the light of the position in New India Assurance Co. Ltd. Vs. Vedwati and Others, the order of the High Court was held by their Lordships to be not sustainable. It was further held that it is open to the claimant to recover the amount awarded from the owners of the offending vehicle.

15. The decision in Smt. Thokchom Ongbi Sangeeta @ Sangi Devi and Another Vs. Oriental Insurance Co. Ltd. and Others, shows that it was held that the passengers in the goods vehicle which met with an accident, the Insurance Company is not liable to pay the compensation .

16. The decision in Premkumari and Others Vs. Prahlad Dev and Others, , shows that the claimants were held entitled to recover the amount from the owner/driver of the vehicle. However, considering the fact that the Appellants were minor children and widow of the deceased, the insurer was directed to recover the amount in the manner as directed in Nanjappan case (2004) 13 SCC 244. It was held that the Insurance Company would be permitted to recover the said amount from the owner of the vehicle and the Appellants would be permitted to recover the rest of the amount from the owner and driver of the vehicle.

17. All these decisions were discussed by a learned Single Judge of this Court in FAO No. No. 281 of 2004, titled United India Insurance Company Ltd. v. Abdul Hamid and Ors., decided on 3.12.2009, and FAO No. 15 of 2006, titled New India Insurance Company Ltd. v. Kushla Devi and Ors. FAO No. 15 of 2006, decided on 15.10.2009. A perusal of these two decisions shows that the learned Single Judge following the decision of the Apex Court in National Insurance Company v. Baljit Kaur (supra), directed that the Insurance Company shall satisfy the award and recover the amount from the insured, which directions were given in case National Insurance Company v. Maghi Ram and Ors. latest HLJ 2009 (HP) 532. However, in United Insurance Company v. Abdul Hamid and Ors., it was observed that the Insurance Company challenged the judgment before the Apex Court and this direction given was set aside and the Apex Court gave the following directions as under:

14. For the reasons aforementioned, Civil Appeal arising out of SLP (C) No. 10694 is allowed and Civil Appeal arising out of SLP (C) No. 9910 of 2006 is dismissed. If the amount deposited by the Insurance Company ahs since been withdrawn by the first Respondent, it would be open to the insurance company to recover the same in the manner specified by the High Court. But if the same has not been withdrawn the deposited amount amy be refunded to the insurance company and the proceedings for realization of the amount may be initiated against the owner of the vehicle. In the facts and circumstances of the case, however, there shall be no order as to costs.

18. However, it was observed by the learned Single Judge that the Apex Court had exercised its extra ordinary jurisdiction under Article 142 of the Constitution to give these directions. This Court does not have any such jurisdiction. The further observations made in the aforesaid case by the learned Single Judge are relevant and are being reproduced below:

It would, however, be relevant to refer to another later judgment of the apex Court in Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others, wherein the apex Court after holding that the Insurance Company is not liable directed it to satisfy the award. Para 19 of the judgment reads as follows:

9. In the result, the appeal is allowed to the limited extent and it is directed that the Appellant - insurance company though not liable to pay the amount of compensation, but in the nature of this case it shall satisfy the award and shall have the right to recover the amount deposited by it along with interest from the owner of the vehicle, viz. Respondent No. 8, particularly in view of the fact that no appeal was preferred by him nor has he chosen to appear before this Court to contest this appeal. This direction is given in the light of the judgments of this Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., .

19. On the basis of the two aforesaid judgments of the Apex Court, it was urged before the learned Single Judge that similar directions should also be given to the Insurance Company. It was observed by the learned Single Judge, while referring to the decision in United India Insurance Co. Ltd. Vs. Suresh K.K. and Another, that the Apex Court, though has not specifically referred to Article 142, it is apparent that the directions have been given in the facts peculiar to that case.

20. It is, therefore, clear that the learned Single Judge in the case referred to above had also issued similar directions following the Apex Court judgments, but the Apex Court set aside that judgment, which clearly showed that these powers can be exercised by the Apex Court under Article 142 of the Constitution and not by the High Court. Accordingly, it was held by the learned Single Judge, after referring to the case law, that the owner can be held liable to pay the award amount and the High Court has no power to direct the Insurance Company to satisfy the award.

21. In view of the above discussion, it is clear that the Insurance Company could not have been directed to deposit the amount in the case of gratuitous passengers. The fact that the deceased was a gratuitous passenger stood established from the evidence that the deceased had taken the lift and as such was a gratuitous passenger and those findings of fact have not been shown to be incorrect during the course of arguments.

22. In view of the above discussion, once it is held that the deceased was a gratuitous passenger, the Insurance Company was not liable to deposit the amount in question. However, in case the amount has been deposited by the Insurance Company and has not been disbursed to the claimants, it shall be refunded to the Insurance Company. In case, part of the amount has been released in favour of the claimants, the same shall not be entitled to be refunded to the Insurance Company, who is held entitled to recover the same from the owner. The appeal filed by the Appellant Insurance Company is allowed to this extent that the claimants are entitled to recover the amount from the owner of the vehicle. The cross appeal being FAO No. 485 of 2005 filed by the owner and the driver of the vehicle is dismissed since there is no merit in the appeal filed by them. A certified copy of the judgment be placed on the record of FAO No. 485 of 2005. However, there is no order as to costs.