

(2014) 07 SHI CK 0158

High Court of Himachal Pradesh

Case No: FAO Nos. 216 and 360 of 2008

Oriental Insurance Co.  
Ltd.

APPELLANT

Vs

Ritesh Kashyap <BR>  
Ritesh Kashyap Vs D.S.  
Sahi

RESPONDENT

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Date of Decision: July 11, 2014

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

Bench: Single Bench

Advocate: Deepak Bhasin, Advocate and Satyen Vaidya, Advocate for the Appellant; Satyen Vaidya, Advocate, Atul Jhingan, Advocate and Deepak Bhasin, Advocate for the Respondent

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### Judgement

Mansoor Ahmad Mir, C.J.

Both these appeals are outcome of award, dated 2nd November, 2006, made by the Motor Accident Claims Tribunal (III) Shimla (hereinafter referred to as the Tribunal) in MACT No. 33-S/2 of 2005/2001, whereby the claim petition of claimant Ritesh Kashyap has been allowed and the insurer was saddled with the liability to pay compensation to the tune of Rs. 3,10,000/-, with interest at the rate of 7.5% per annum, from the date of the petition till the amount is deposited with the Tribunal (for short "the impugned award").

2. FAO No. 216 of 2008 has been preferred by the insurer challenging the findings of the Tribunal to the extent of saddling the insurer with the liability, while in FAO No. 360 of 2008, preferred by the claimant, challenge is thrown to the adequacy of compensation. The other findings recorded by the Tribunal are not in dispute.

Brief facts:

3 The claimant-petitioner, being the victim of vehicular accident, filed a claim petition for grant of compensation to the tune of Rs. 12,00,000/-, as per the

breakups given in the claim petition on the ground that he was traveling in a tractor bearing registration No. CH-01-H-5430 on 16th June, 2000, at about 9.30 P.M. The said tractor went out of the road due to rash and negligent driving of respondent No. 2, driver of the offending vehicle, at Shakrala (Mehli) as a result of which the claimant sustained multiple fractures on his right femur, right side pelvis and right arm and was taken to the hospital for treatment. Thus, the claimant filed the Claim Petition claiming compensation, as detailed above.

4. The owner, the driver and the insurer contested the claim petition by filing replies.

5. On the pleadings of the parties, the following issues were framed by the Tribunal:-

1. Whether the petitioner has suffered injuries on account of rash and negligent driving of vehicle by respondent No. 2? OPP

2. If issue No. 1 is proved in affirmative, to what amount the petitioner is entitled and from whom? OPP

3. Whether the petition is not maintainable? OPR 1 & 3

4. Whether the petitioner has no cause of action against respondent No. 1? OPR-1

5. Whether the respondent No. 2 did not possess effective and valid driving licence? OPR-3

6. Whether the vehicle was being driven in breach of terms and conditions of insurance policy? OPR-3

7. Relief.

6. The parties led evidence. The claimant has examined eight witnesses, including himself, while the owner has examined four witnesses and the insurer has not led any evidence.

7. The Tribunal, after scanning the evidence, allowed the claim petition and awarded compensation to the tune of Rs. 3,10,000/- and saddled the insurer with the liability. It was also held that the accident had occurred due to contributory negligence on the part of the claimant and respondent No. 2.

8. The owner and the driver have not questioned the said finding. However, claimant Ritesh Kashyap questioned the same by the medium of FAO No. 360 of 2008 and sought enhancement of compensation, and the insurer has also questioned the same in FAO No. 216 of 2008 to the extent of saddling it with the liability.

9. From the reading of the impugned award, it is clear that the amount of compensation awarded by the Tribunal is just and reasonable and by no stretch of imagination it can be said to be inadequate. Therefore, the appeal, being FAO No. 360 of 2008, preferred by the claimant, merits to be dismissed.

10. Now coming to the question whether the insurer was rightly saddled with the liability, the learned counsel for the insurer has argued that the Tribunal has fallen in error in fastening the liability to pay compensation upon the insurer since the claimant was traveling in the offending tractor as unauthorized passenger.

11. From a perusal of the averments contained in the claim petition, the claimant has admitted that he was traveling in the offending tractor as a passenger and there is also evidence available on the record that he was traveling in the said tractor, which is not permissible. Thus, the owner has committed willful breach of the terms and conditions contained in the insurance policy.

12. Having said so, the Tribunal has fallen in error in saddling the insurer with the liability. Accordingly, the impugned award is modified to the extent that the insurer has to pay the compensation amount, at the first instance, and recover the same from the owner.

13. At this stage, learned counsel for the insurer stated that the Insurance Company has already deposited the awarded amount in the Registry of this Court. The Registry is directed to release the amount, alongwith up-to-date interest, in favour of the claimant strictly in terms of the impugned award. The owner-insured is directed to deposit the amount to be paid to the insurer-appellant in FAO No. 216 of 2008, in the Registry of this Court within four months from today and the Registry is directed to release the said amount in favour of the insurer through payee's account cheque.

14. In view of the above, FAO No. 360 of 2008 is dismissed and FAO No. 216 of 2008 is allowed and the impugned award is modified.