

(2015) 12 SHI CK 0073
High Court of Himachal Pradesh
Case No: FAO (MVA) No. 124 of 2009

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Giano Devi and Others

RESPONDENT

Date of Decision: Dec. 18, 2015

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

Bench: Single Bench

Advocate: G.C. Gupta, Sr. Advocate and Meera Devi, Advocate, for the Appellant;
Bhupinder Pathania, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. Challenge in this appeal is to the judgment and award dated 26.11.2008, made by the Motor Accident Claims Tribunal-II Kangra at Dharamshala in MACP No. 59-G/2005, titled Giano Devi and another versus Ramesh Singh and others, for short "the Tribunal", whereby compensation to the tune of Rs. 2,69,000/- alongwith interest @ 7.5% per annum and Rs. 7000/- as costs, was awarded in favour of the claimants and insurer came to be saddled with the liability, hereinafter referred to as "the impugned award", for short.
2. Claimants, owner and driver have not questioned the impugned award on any ground, thus it has attained finality so far it relates to them.
3. The insurer has questioned the impugned award on the ground that the owner has committed willful breach and there is collusion between the claimants, owner and the driver. Thus, the insurer was not liable.
4. In order to determine the controversy, it is necessary to give a brief resume of the relevant facts herein.
5. The claimants being the victims of a vehicular accident caused by driver, namely, Kikkar Singh, while driving offending vehicle bearing registration No. HP/63-0815,

rashly and negligently at Pawali Kainchie, within the jurisdiction of Police Station Rohru on 26.12.2008, in which the deceased sustained injuries and succumbed to the same. The deceased was performing the job of a conductor-cum-labourer in the said vehicle. The claimants have claimed compensation to the tune of Rs. 6 lacs, as per the break-ups given in the claim petition.

6. The respondents resisted and contested the claim petition and following issues came to be framed.

"(i) Whether the respondent No. 2 being driver of offending vehicle HP-63-0815 owned by respondent No. 1 was driving it in a rash and negligent manner on 26.12.2004 and had thrown the vehicle in a ditch at Pabli Kainchi within the jurisdiction of Police Station Rohru causing the death of the deceased? OPP.

(ii) If issue No. 1 is proved in affirmative, whether the petitioners being parents of the deceased are entitled to claim compensation from the respondents? If so to what amount and from whom? OPP.

(iii) Whether the respondent No. 2 was not having a valid and effective driving licence on the day of accident, as alleged? If so its effect? OPR-3.

(iv) Whether the offending vehicle was not insured with respondent No. 3 as alleged? OPR-3.

(v) Whether the petition has been filed by the petitioners on collusion with respondents Nos. 1 and 2 as alleged? OPR 3.

(vi) Whether the petition is not maintainable because of non-joinder of necessary parties as alleged? OPR-3.

(vii) Whether the deceased was a gratuitous passenger traveling in the vehicle as alleged/If so, its effect? OPR-3.

(viii) Relief."

7. The parties have led the evidence.

8. Respondents No. 1 and 2 before the Tribunal have filed the amended reply. It is apt to reproduce paras 3 and 6 of the said reply herein.

"3. In reply to para No. 4, 10: Admitted to be correct. In fact the deceased was traveling in the vehicle involved in the accident, but it is true that he was working as conductor cum labourer in the said vehicle.

4-5.... ..

6. In reply to para No. 24:-- Partly admitted to the extent that the respondent No. 2 was driving the vehicle involved in accident and the deceased was traveling in it and the respondent himself got some inquiries. It is wrong that the respondent No. 2 was driving the vehicle in a very high speed and in rash and negligent manner. For

the rest of the contents the replying respondents are not aware as to the correctness as such denied, the petitioners are not entitled to the compensation as claimed by them."

9. Respondents No. 1 and 2 have virtually admitted that the deceased was working with them as helper/labourer/conductor, which is not in dispute. The question is when the owner and driver admit that the deceased was performing the job of a conductor-cum-labourer/helper, how can the insurer be allowed to plead that he was a gratuitous passenger. It was for the insurer to plead and prove the said fact.

Issue No. 1.

10. The Tribunal has specifically held that the accident was outcome of rash and negligent driving of the driver, namely Kikar Singh. There is no dispute about issue No. 1. Thus, the findings returned by the Tribunal on issue No. 1 are upheld.

Issue No. 3.

11. Before I deal with issue No. 2, I deem it proper to deal with issue No. 3 at the first instance. It was for the insurer to prove that the driver was not having a valid and effective driving licence, has failed to discharge the onus. Even the learned counsel for the appellant has not questioned the findings returned on this issue. Accordingly, the findings returned on issue No. 3 are upheld.

Issue No. 4.

12. The factum of insurance is not in dispute in this appeal. Accordingly, the findings returned on this issue are upheld.

Issue No. 5.

13. The insurer has not led any evidence to prove that there is collusion between the claimants, driver and the owner. The accident has taken place. The deceased has died. How can it be said that there is collusion between the claimants, driver and the owner. The only dispute is whether the deceased was performing the job of a helper/conductor/labourer or he was a gratuitous passenger. That does not mean that there was any collusion. However, the insurer has not led any evidence to this effect, thus, the findings returned on this issue are upheld.

Issue No. 6.

14. It was for the insurer to carve out a case how the claim petition is not maintainable because of non-joinder of necessary parties, has not led any evidence and even the learned counsel for the appellant has not been able to carve out a case that the claim petition is not maintainable because of nonjoinder of necessary parties.

15. Viewed thus, the findings returned on issue No. 6 are upheld.

Issues No. 2 & 7.

16. Both these issues are interlinked, hence are taken up together. The claimants have specifically averred in the claim petition that the deceased was conductor/helper, which has been admitted by the respondents, as discussed hereinabove. The owner and driver have not led any evidence to prove this fact. However, the claimants have led evidence and proved the said fact and the Tribunal has rightly made discussions in paras 13 to 15 of the impugned award, cannot be said that the Tribunal has returned the findings illegally and without any substance and evidence. Having said so, the findings returned on issues No. 2 and 7 merit to be upheld and are accordingly upheld.

17. The amount awarded though appears to be meager but the claimants have not questioned the same, thus, reluctantly upheld.

18. Having glance of the above discussion, I see no reason to interfere with the impugned award. Accordingly, the appeal is dismissed and the impugned award is upheld.

19. The Registry is directed to release the amount in favour of the claimants, strictly, in terms of the conditions contained in the impugned award, through payee's cheque account.

20. Send down the record, forthwith, after placing a copy of this judgment.