

(2016) 09 SHI CK 0022
High Court of Himachal Pradesh
Case No: FAO No. 393 of 2011

Oriental Insurance Company

APPELLANT

Vs

Smt. Malti

RESPONDENT

Date of Decision: Sept. 19, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, Section 149, Section 166, Section 168

Citation: (2016) AAC 2427

Hon'ble Judges: Mr. Chander Bhusan Barowalia, J.

Bench: Single Bench

Advocate: Mr. N.S. Chandel, Advocate, for the Respondent No. 7; Mr. Nimish Gupta, Advocate, for the Respondent No. 6; Mr. Vinod Thakur, Advocate, for the Respondent Nos. 1 to 5; Mr. G.C. Gupta, Senior Advocate, with Ms. Meera Devi, Advocate, for the Appellant

Final Decision: Dismissed

Judgement

Mr. Chander Bhusan Barowalia, J. - The present appeal is maintained by the appellant-Oriental Insurance Company, who was respondent No. 1 before the learned Tribunal below (hereinafter referred to as "the appellant"), under Section 173 of the Motor Vehicles Act, 1988 (as amended by the Act of 1994) (hereinafter referred to as "the Act") against the award dated 16.07.2011, passed by the Motor Accident Claims Tribunal, Fast Track Court, Chamba, H.P., in M.A.C. No. 1/2011.

2. Briefly stating the facts giving rise to the present appeal are that respondents No. 1 to 5/claimants, who were the petitioners before the learned Tribunal below (hereinafter referred to as "the claimants"), maintained a petition under Section 166 of the Act against the appellant/Insurance Company/respondent No. 1 in the learned Tribunal below (hereinafter referred to as "respondent No. 1"), respondents No. 6 and 7 herein, who were respondents No. 2 and 3, respectively, being owner and driver of the ill fated vehicle, which met with an accident, (hereinafter referred to as "respondents No. 2 and 3") for compensation on account of death of husband

of petitioner No. 1, Smt. Malti, and father of petitioners No. 2 to 5, which was caused due to the rash and negligent driving of respondent No. 3 while driving the vehicle, bearing registration No. HP 68-0186 (pick up) owned by respondent No. 2.

3. As per the petitioners Shri Man Singh (deceased), who was husband of petitioner No. 1 and father of petitioners No. 2 to 5, on 04.10.2010 was traveling from Dand to Chakhotar, being owner of goods, in vehicle No. HP 68- 0186. the said vehicle was being driven by respondent No. 3 in a rash and negligent manner and while negotiating a curve near Falanju Nallah the vehicle fell down into the gorge, which resulted into the death of the deceased. It is further contended that the deceased was 53 years of age at that time and was employed as Beldar/Mate in HPPWD, Salooni. His monthly salary was Rs. 14,676/- and he was earning Rs. 5000/- from agriculture. The report qua accident was registered at Police Station, Kihar, vide FIR No. 70/2010 and post mortem of the deceased was also conducted. As per post mortem, the deceased had died due to intra-cranial haemorrhage and head injury. Vehicle was owned by respondent No. 2 and it was insured with respondent No. 1 (appellant herein). As per the petitioners, they were dependent upon the deceased and they have been deprived of the love and affection and they have also suffered mental agony, pain, financial loss etc.

4. The petition filed before the learned Tribunal was resisted by the respondents and they have filed separate replies. Respondent No. 1/Insurance Company took preliminary objection viz., maintainability, driver of the vehicle was not having valid driving license, the deceased was traveling as a gratuitous passenger and the vehicle met with an accident due to overloading, as more than ten passengers were traveling in it at the time of accident. On merits, respondent No. 1 denied the contents of the petition and reiterated that the deceased was traveling as a gratuitous passenger and the amount claimed is excessive. It is also contended that the vehicle was not having valid route permit. Respondent No. 2, while filing reply to the petition, took preliminary objection that he is not liable to pay any amount as the vehicle was duly insured with respondent No. 1/Insurance Company, vide Police No. 91189902, w.e.f. 14.11.2009 to 13.11.2010. Therefore, the liability to indemnify the claim is on respondent No. 1. On merits, it is contended that the deceased was traveling in the vehicle as owner of the goods. On the other hand, respondent No. 3 also filed reply, wherein he has stated that FIR was recorded on twisted facts and that he was driving the vehicle carefully, but due to mechanical defect the vehicle went out of control and fell into a gorge.

5. The learned Tribunal below has framed the following issues:

"1. Whether deceased Man Singh had died on 04.10.2010 in the motor vehicle accident involving vehicle No. HP 68-0186 (pick up) near Nallah Falanju, Tehsil Salooni due to rash or negligent driving of the driver rattan Chand of the offending vehicle? OPP.

2. If issue No. 1 is proved in affirmative, whether the petitioners being dependent on deceased are entitled for the grant of compensation. If so, to what amount? OPP.
3. Whether the petition is not maintainable? OPR.
4. Whether the driver of the vehicle was not having valid driving licence? OPR.
5. Whether the deceased was gratuitous passenger? OPR.
6. Whether the accident had taken place due to over loading of the passengers in the ill fated vehicle? OPR.
7. Whether the vehicle waqs not having valid registration certificate? OPR.
8. Whether the petition is not maintainable? OPR-2.
9. Relief."

After deciding issues No. 1 and 2 in favour of the petitioners and issues No. 3 to 8 against the respondent, allowed the petition. Hence the present appeal.

6. Heard. Learned Senior Counsel for the appellant herein has argued that the learned Tribunal below has not appreciated the evidence as well as the pleadings of the parties correctly. He has also argued that the learned Tribunal below has failed to take into consideration the fact that the deceased was a gratuitous passenger. He has further argued that even the compensation awarded is on a very higher side as well as the petition was collusive inter se the petitioners and respondents No. 2 and 3. He has further argued that even the negligence on the part of the driver was not proved on record. On the other hand, learned counsel for the claimants (respondents No. 1 to 5 herein) has argued that the deceased was carrying the goods, that is, ration for the marriage of his son and this fact has come on record. He has further argued that by oral evidence and from FIR, the negligence on the part of respondent No. 3 (driver of the vehicle) is proved and also the fact that other witnesses have also stated that the accident has occurred due to the negligence of the driver. He has argued that the learned Tribunal below has awarded less compensation, but at the same time he has averred that he has neither filed any appeal nor any cross objection. The learned counsel for respondent No. 6 herein (owner of the vehicle) has argued that it is amply proved on record that goods were being transported in the said vehicle, which belonged to the deceased and the vehicle was hired for Rs. 800/-. He has further argued that the appeal deserves dismissal. Learned counsel for respondent No. 7 herein has adopted the arguments, as advanced by the learned counsel for respondent No. 6.

7. To appreciate the rival contentions of the learned counsel for the parties I have gone through the record in detail.

8. In order to prove their case, the respondents No. 1 to 5 (petitioners before the Tribunal below) have examined petitioner No. 1, Smt. Malti, as PW-1, who has

tendered her affidavit, Ex. PW-1/A. PW-2, Shri Tula Ram, has tendered his affidavit, Ex. PW-2/A. PW-3, Shri Pushpender Singh, Clerk, of HPPWD was examined to prove the income of the deceased. PW-4 HHC Diwan Chand, Police Station Kihar was examined to prove the FIR and PW-5 Dr. Manoj Thakur, conducted the post mortem of the deceased and he has proved on record the post mortem report, Ex. PW-5/A.

9. Smt. Malti (PW-1) has filed affidavit, Ex. PW-1/A, which corroborates the contents of the petition she deposed that on 04.10.2010 at about 4:15 p.m. the deceased was traveling in the vehicle No. HP 68-0186, as owner of the goods. The said vehicle met with accident near Nallah Falanju on Dand Chakotar road due to the rash and negligent driving of respondent No. 3. PW-1 has further stated that the deceased died on account of injuries sustained in the accident. As per her, she is wife of the deceased and petitioners No. 2 to 5 are sons and daughter of the deceased. She was subjected to extensive cross-examination but nothing contradictory has come qua the accident. She has denied that the accident occurred due to mechanical failure and that the accident was not the result of rash and negligent driving. PW-1 has disclosed for the first time that her husband was traveling as owner of the goods, but there was no occasion for her to state this fact anywhere else. She has denied that her husband was gratuitous passenger and more than ten persons were there in the vehicle due to overloading the accident had occurred. There is no reason to disbelieve petitioner No. 1, as she lost her husband. Her version stands fortified by PW-2, Shri Tula Ram, who has also tendered his affidavit of evidence, Ex. PW-2/A. PW-2 has stated that the deceased was traveling in the ill fated vehicle along with the goods of marriage, but the vehicle fell into the Nallah, which was the result of rash and negligent driving of the driver of the vehicle. He has denied in his cross-examination that the accident had taken place due to the mechanical defect or that the driver was not rash or negligent. He has also denied that no goods of marriage were being transported by the deceased claiming that the deceased had bought the articles of marriage/Dham in his presence from the shop of Pawan Kumar. The version of this witness is fortified by the version of PW-1, therefore the versions of PW-1 and PW-2 cannot at all be doubted. This witness has also denied that the deceased was traveling as gratuitous passenger or there were ten persons sitting in the vehicle and the accident had occurred due to the overloading of the vehicle.

10. The petitioners have also examined HHC Diwan Chand (PW-4) who has proved FIR No. 70/10, dated 04.10.2010, under Sections 279, 337 and 304-A IPC, Ex. PW- 4/A. As per the contents of FIR, Ex. PW-4/A, the ill fated vehicle met with accident at about 4:15 p.m. at Falanju Nallah, due to rash and negligent driving. It is mentioned in the FIR, Ex. PW-4/A, that the deceased was walking on foot along with Khajanu and boarded the ill fated vehicle near Dand and Iqbal, Pawan Kumar, Subhan, Ahamad Deen and Yog Raj were also sitting in the vehicle, who sustained injuries. However, said Khajanu was not examined by respondent No. 1 that the deceased was not having any goods. Neither any injured was examined nor their MLCs have

been placed on record demonstrating that they sustained the injuries in the said accident. If so, there are no merits in the stand of respondent No. 1 that the deceased was not traveling as owner of the goods or that there were more than 10 persons in the vehicle or that overloading was the cause of accident.

11. In the instant case the post mortem of the deceased was conducted at CHC, Salooni, and Dr. Manoj Thakur, M.O. (PW-5) conducted the post mortem of the deceased on 05.10.2010 and he has issued report, Ex. PW- 5/A. As per him, the cause of death was intra cranial haemorrhage and the injury was possible in a vehicular accident. On the other hand, respondent No. 2 has appeared in the witness-box as RW-1. However, he did not utter a single word that the accident took place due to the mechanical failure or overloading. Respondent No. 1 did not produce any evidence. Respondent No. 3 has also not stepped into the witness-box to substantiate that the mechanical defect was the cause of accident. In the absence of any cogent evidence, it stands duly established that the accident was the result of rash and negligent driving of respondent No. 3.

12. It has come on record that while PW-2, Shri Tula Ram, was being cross-examined by respondent No. 1 (appellant herein) that the ill fated vehicle was hired for Rs. 800/- by the deceased and the deceased was carrying the goods for marriage. The onus was on respondent no. 1/Insurance Company to prove that the deceased was a gratuitous passenger and no positive evidence has been led by respondent No. 1 to discharge its onus, which was on respondent No. 1. Therefore, I find no illegality in the findings arrived at by the learned Tribunal below, holding that the deceased was not the gratuitous passenger. It has also come on record that the vehicle met with an accident when respondent No. 3 (driver) could not control the vehicle and the vehicle fell into a khud. No mechanical defect in the vehicle has been proved on record by respondents No. 2 and 3 and, therefore, the only conclusion is that the vehicle met with an accident due to rash and negligent driving of respondent No. 3. I find no infirmity with the impugned award, so passed by the learned Tribunal below. At the same time, as far as the compensation is concerned, there is no cross-objection filed on behalf of the petitioners in the appeal and simply on the basis of arguments here and there no enhancement can be granted to the petitioners, as there is no cross-objection in the appeal, otherwise also the quantum of compensation is in accordance with settled principles.

13. Resultantly, the findings arrived at by the learned Tribunal below are just, reasoned and after appreciating the facts and evidence, which has come on record, to their true perspective and the law has been applied correctly. Thus, no interference is required. Consequently, the appeal is dismissed with no orders as to costs.

14. In view of the above, the appeal stands disposed of, as also pending application(s), if any.