

(2016) 06 SHI CK 0102

High Court of Himachal Pradesh

Case No: FAO No. 283 of 2010.

Oriental Insurance Company Ltd.

- Appellant @HASH Smt. Shanta
and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: June 17, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149

Citation: (2016) AAC 2051 : (2016) ILRHP 1974

Hon'ble Judges: Mansoor Ahmad Mir, CJ.

Bench: Single Bench

Advocate: Mr. Ashwani K. Sharma, Senior Advocate, with Mr. Nishant Kumar, Advocate, for the Appellant; Mr. Ajay Sharma, Advocate, for the Respondent Nos. 1 to 3 in FAO No. 283 of 2010 and Respondent No. 1 in FAO No. 284 of 2010; Nemo, for the Respondent No. 4 in FA

Final Decision: Dismissed

Judgement

Mr. Mansoor Ahmad Mir, C.J. - Both these appeals are outcome of a motor vehicular accident, which was allegedly caused by the driver, namely Karam Singh, who also died in the said accident, while driving Maruti Car, bearing registration No. PB-02K-0078, rashly and negligently on 11th August, 2008, at about 5.30 A.M. at Nehar Nalla near Kutt, District Chamba, in which husband and wife, namely Shri Vishal Sharma and Smt. Alka Sharma, sustained injuries and succumbed to the injuries, constraining the claimants to file two claim petitions before the Motor Accident Claims Tribunal, Chamba Division, Chamba (HP) (for short "the Tribunal").

2. The claimants in MAC Petition No. 62 of 2008 (subject matter of FAO No. 283 of 2010) are the parents and minor son of deceased-Vishal Sharma.

3. In MAC Petition No. 64 of 2008 (subject matter of FAO No. 284 of 2010) claimant, namely Master Pratyush Kant, has claimed compensation on account of death of his mother, deceased-Alka Sharma.

4. The claimants in both the claim petitions have prayed for grant of compensation, as per the break-ups given in the respective claim petitions.

5. Both the claim petitions were resisted by the insurer and the owner-insured of the offending vehicle on the grounds taken in the respective memo of objections.

6. Similar set of issues came to be framed in both the claim petitions. I deem it proper to reproduce the issues framed by the Tribunal in MAC Petition No. 62 of 2008 (subject matter of FAO No. 283 of 2010) herein:

"1. Whether Vishal Sharma died due to rash and negligent driving of Car No. PB-02K-0078 by driver Karam Singh? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP

3. Whether deceased was unauthorized occupant of the vehicle in question, as alleged? OPR-1

4. Whether driver of the vehicle was not holding a valid and effective driving licence at the time of accident? OPR-1

5. Whether the vehicle in question was being driven in contravention of the terms and conditions of the insurance policy? OPR-1

6. Relief."

7. The claimants have led evidence in both the claim petitions. The owner-insured and the insurer, i.e. the respondents in the claim petitions, have not led any evidence in both the claim petitions. Thus, the evidence led by the claimants has remained unrebutted.

8. The Tribunal, after scanning the evidence, oral as well as documentary, made two separate awards on 15th February, 2010, and awarded compensation to the Rs. 6,53,000/- and Rs. 4,52,000/- in MAC Petitions No. 62 of 2008 and 64 of 2008, respectively, with interest @ 7.5% per annum from the date of filing of the claim petitions in favour of the claimants with a direction to the insurer to satisfy the awards (for short "the impugned awards").

9. The claimants and the owner-insured of the offending vehicle have not questioned the impugned awards on any count, thus, have attained finality so far the same relates to them.

10. The insurer has questioned both the impugned awards by the medium of both these appeals on the ground that the Tribunal has fallen in an error in saddling it

with liability.

11. The ground of attack in both the appeals is that the deceased couple and the son, namely Master Pratyush Kant were travelling in the Maruti Car, thus, they were unauthorized occupants and their risk was not covered.

12. The dispute in both the appeals is viz-a-viz issues No. 3, 5 and part of issue No. 2. Thus, I deem it proper to determine both these appeals by this common judgment.

Issue No. 1:

13. The claimants have led evidence and proved that the driver of the offending vehicle, namely Shri Karam Singh, had driven the Maruti Car, bearing registration No. PB-02K-0078, rashly and negligently on 11th August, 2008 and caused the accident, in which deceased-Vishal Sharma and Alka Sharma sustained injuries and succumbed to the injuries. The said findings are not in dispute, accordingly, the findings recorded by the Tribunal on issue No. 1 are upheld.

14. Before I deal with issue No. 2, I deem it proper to determine issues No. 3 to 5.

Issues No. 3 and 5:

15. Both these issues are interconnected, thus, are being determined together.

16. It was for the insurer to lead evidence, has not led any evidence to prove that the owner-insured of the offending vehicle has committed any wilful breach or has violated the terms and conditions contained in the insurance policy, thus, has failed to discharge the onus.

17. It is beaten law of the land that it is for the insurer to plead and prove that the owner-insured has committed breach, that too, wilful breach.

18. The factum of insurance is admitted. I have gone through the insurance policy, which is on the record of MAC Petition No. 62 of 2008 as Ext. R-3. The perusal of the same does disclose that risk of "3+1" was covered. While going through the details of premium paid, which is contained in the Schedule of Premium, it is crystal clear that premium has been paid of third party cover. Meaning thereby, the risk of third party is also covered.

19. Additional amount has also been paid which covers the risk of the driver and the owner-insured. The legal representatives of deceased driver are not before this Court and it appears that they have not filed any claim petition.

20. It is not the case of the insurer that the deceased couple and the son was travelling in the offending vehicle as gratuitous passengers or had hired the vehicle.

21. The case projected by the claimants in both the claim petitions is that the deceased couple along with their son was travelling in the offending vehicle. The owner-insured of the offending vehicle has filed reply and has admitted paras 8, 9

and 14 to 22 of the claim petition. Thus, the factum of accident and the death of the couple is admitted.

22. Learned Senior Counsel appearing on behalf of the insurer argued that the deceased couple was travelling in the offending vehicle as gratuitous passengers, thus, their risk was not covered.

23. I have dealt with the similar question as Judge of the Jammu and Kashmir High Court at Jammu in the case titled as **New India Assurance Co. Ltd. v. Shanti Bopanna and others, reported in 2014 ACJ 219**, and held that the insurer is liable.

24. This question was also raised before this Court in a series of cases including FAO No. 71 of 2011, titled as New India Assurance Company Ltd. v. Smt. Anuradha and others, decided on 10th January, 2014; a batch of FAOs, FAO No. 364 of 2010, titled as Oriental Insurance Co. Ltd. v. Puni Ram & others, being the lead case, decided on 18th July, 2014; and FAO No. 202 of 2013, titled as Oriental Insurance Company Limited v. Pankaj & others, decided on 10th October, 2014, wherein this Court, while discussing the judgment rendered by the Apex Court in the case titled as **National Insurance Company Ltd. v. Balakrishnan and another, reported in 2012 AIR SCW 6286**, held that risk was covered and the insurer is liable.

25. In Pankaj's case (supra), the vehicle involved was also a private vehicle - Maruti Alto. It is apt to reproduce relevant paras of the judgment herein:

"8. I have gone through the insurance policy, Ext. R-3. The perusal of the same do disclose that risk was covered and also premium amount has been paid for 3 + 1 persons, details of which have been given in the schedule of premium. Additional premium has been paid for the driver and the employee also. Thus, it cannot lie in the mouth of the appellant-insurer that the risk of the claimant-injured was not covered. The Tribunal has rightly discussed this issue while determining issues No. 3 and 4 in paras 29 and 30 of the impugned award.

9.

10.

11. The Insurance Regulatory and Development Authority (IRDA) has laid down some guidelines. In terms of that guidelines, the insurer cannot resist the claim petition against the occupants of the vehicle, whose risk is covered in terms of the policy. This issue came up for consideration before the High Court of Delhi in a case titled as **Yashpal Luthra and another v. United India Insurance Co. Ltd. and another, reported in 2011 ACJ 1415**, and all these guidelines were discussed.

12.

13. This Court in cases titled New India Assurance Company Ltd. v. Smt. Ritu Upadhyaya and others, being FAO (MVA) No. 135 of 2011, decided on 10th January, 2014, **New India Assurance Company Ltd. v. Smt. Anuradha and others**,

reported in Latest HLJ 2014 (HP) 1; United India Insurance Company Ltd. v. Smt. Kulwant Kaur & another, being FAO No. 226 of 2006, decided on 28th March, 2014 and in a bunch of appeals, FAO No. 560 of 2009, titled as Oriental Insurance Company Limited v. Smt. Bantu (since deceased) and others being the lead case, decided on 22nd August, 2014, decided the same issue and has held that the insurer is liable.

14. Having said so, the argument of the learned counsel for the appellant-insurer fails and the Tribunal has rightly saddled the appellant-insurer with liability."

26. The insurer in the said appeals have questioned the judgments made by this Court in FAOs 71 of 2011, 364 of 2010 and 202 of 2013 before the Apex Court by the medium of Special Leave to Appeal being SLPs (C) No. 13031/2014, 4857-4870/2015 and 7420/2015, which came to be dismissed vide orders, dated 25th August, 2014, 23rd March, 2015 and 16th March, 2015, respectively.

27. Having said so, the argument of the learned Senior Counsel is not tenable.

28. It is also worthwhile to record herein that the insurer has not pleaded in its reply that the deceased were gratuitous passengers. The only ground taken is that the deceased were the unauthorized occupants in the offending vehicle, which it has failed to prove.

29. Viewed thus, the findings recorded by the Tribunal on issues No. 3 and 5 are upheld and the same are decided in favour of the claimants and the owner-insured and against the insurer.

Issue No. 4:

30. It was for the insurer to lead evidence to prove that the driver of the offending vehicle was not having a valid and effective driving licence at the time of the accident, has not led any evidence, thus, has failed to discharge the onus. Even, the learned Senior Counsel appearing on behalf of the insurer has not argued that the driver was not having a valid and effective driving licence.

31. However, I have gone through the driving licence, which is on the record of MAC Petition No. 62 of 2008 as Ext. R-2, the perusal of which does disclose that the driver of the offending vehicle was holding a valid and effective driving licence at the relevant point of time. Thus, the findings recorded by the Tribunal on issue No. 4 are upheld.

Issue No. 2:

32. The quantum of compensation is not in dispute. The only dispute is as to who is to be saddled with liability. In view of the discussions made herein above, the insurer is saddled with liability.

33. In the given circumstances, both the impugned awards merit to be upheld and the appeals are to be dismissed. Accordingly, the impugned awards are upheld and both the appeals are dismissed.

34. Registry is directed to release the awarded amount in both the claim petitions in favour of the claimants strictly as per the terms and conditions contained in the respective impugned awards through the payee's account cheque or by depositing the same in their respective bank accounts.

35. Send down the records after placing copy of the judgment on each of the Tribunal's file.