IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO(MVA) No. 31 of 2017
Decided on: December 24, 2020

Oriental Insurance Company Ltd. ..Appellant

Versus

Sh. Manak Chand and others .....Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] yes.

For the appellant	**:**	Dr. Lalit K. Sharma, Advocate, Advocate.
For the respondents	**:**	Mr. Naveen K. Bhardwaj, Advocate for respondents Nos. 2 to 4. Mr. Vinod Chauhan, Advocate, for respondent No.5.

Sandeep Sharma, Judge:

Instant appeal filed under S.173 of the Motor Vehicles Act (hereinafter, 'Act') lays challenge to award dated 31.8.2016 passed by Motor Accident Claims Tribunal-II, Chamba, District Chamba, in MACT Petition No. 394/2014, titled Manak Chand and others vs. Tashika Tour and Travel and another, whereby learned Tribunal below, while allowing claim petition filed by respondents Nos. 1 to 4/claimants (hereinafter, 'claimants') under S.166 of the Act, claiming therein compensation on account of death of Chalo Devi, awarded a sum of Rs. 5,49,600/- in favour of the claimants, alongwith interest at the rate of 7.5% per annum from the date of filing of the petition

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

till realisation thereof, payable by appellant-Insurance Company.

2. Precisely, the facts of the case as emerge from the record are that on 19.4.2014, at about 4.55 am, ill-fated vehicle bearing registration No. HP-01C-3304 (Maxi cab) being driven by driver namely Prithi Chand, met with an accident, as a consequence of which, deceased Chalo Devi, who was one of the occupants died on the spot. Claimants being dependents of Chalo Devi, filed petition under S.166 of the Act, before learned Tribunal below, claiming therein compensation to the tune of Rs. 15.00 Lakh. Claimants claimed before learned Tribunal below that deceased Chalo Devi was supplementing the income of family by doing agricultural work and rearing milching cattle. Claimants also claimed that deceased used to manage household affairs and as such, they are entitled to compensation on account of untimely death of deceased. Claimants claimed before learned Tribunal below that due to untimely death of Chalo Devi, they have suffered irreparable loss of love and affection.

3. Appellant-Insurance Company, while resisting the claim of the claimants, claimed that since driver of the offending vehicle was not having valid and effective driving licence at the time of accident, it is not liable to indemnify the insured. Besides above, appellant-Insurance Company claimed that

offending vehicle was not having valid registration certificate, route permit, valid fitness certificate and since the vehicle was being driven in violation of the Motor Vehicles Act and the insurance policy, it cannot be held liable to pay compensation, if any, on account of death of passengers traveling in the ill-fated vehicle at the time of accident. Appellant-Insurance Company also took an objection that at the time of accident, twelve persons were traveling in the ill-fated vehicle against seating capacity of 10 and as such, ill-fated vehicle was overloaded at the time of alleged accident, as such, appellant-Insurance Company is not liable to indemnify the insured, since the vehicle was insured for ten persons i.e. nine occupants plus one driver.

4. Learned Tribunal below, on the basis of pleadings of parties, framed following issues on 10.12.2014:

> "1. Whether the deceased Challo Devi had died on 19-4-2014 on account of accident of vehicle No. HP-01C-3304 MaXI-CAB due to rash or negligent driving by Prithi Chand after vehicle met with an accident near Darab Shalla? OPP
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> 2. If issue No.1 is proved in affirmative, whether the petitioners are entitled for the grant of compensation, if so, to what amount and from which of the respondents? OPP.
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> 3. whether the petition is not maintainable? OPR-1 & 2.

4. Whether the driver of the offending vehicle was not having valid and effective driving licence. At the time of accident as alleged? OPR-2
5. Whether the offending vehicle was not having valid registration certificate, route permit and valid fitness certificate as alleged? OPR-2
6. Whether the vehicle was being driven in violation of the provisions of Motor Vehicles Act and terms and conditions of Insurance Policy as alleged? OPR-2
7. Whether the offending vehicle at the time of accident was carrying more passengers against the permissible limit of seating capacity of the vehicle? OPR-2
8. Relief?"

5. Claimants examined two witnesses in support of their claim, whereas none of the respondents including appellant-Insurance Company led oral evidence. Respondent NO.5, tendered evidence Ext. R-1, copy of RC Ext. R2, copy of fitness certificate Ext. R-3, copy of driving licence, Ext. R4 and closed its evidence, whereas, appellant-Insurance Company only tendered in evidence, insurance policy, Ext. RA. Learned Tribunal below, on the basis of pleadings of parties as well as evidence led on record by respective parties, allowed the claim petition and held claimants entitled to compensation to the tune of Rs. 5,49,609, with interest at the rate of 7.5% per annum payable by appellant-Insurance Company. In the

aforesaid background, appellant-Insurance Company has approached this Court in the instant proceedings, praying therein to set aside the impugned award.

6. Having heard learned counsel for the parties and perused the grounds of appeal, this Court finds that primarily challenge to the impugned award by appellant-Insurance Company is on the ground that since the ill-fated vehicle was being plied in contravention of terms and conditions of the insurance policy, learned Tribunal below ought not have saddled appellant-Insurance Company with liability to pay compensation to the dependents of deceased, who unfortunately expired in the accident.

7. Mr. Lalit K. Sharma, Advocate appearing for the appellant-Insurance Company, while making this Court peruse insurance policy, Ext. RA, tendered in evidence, contends that only 10 persons could travel in the vehicle in question as per policy, but, in the case at hand, it stands proved on record that at the time of accident, 12 persons were traveling in the ill-fated vehicle against capacity of 10, as such, learned Tribunal below could not have held appellant-Insurance Company liable to pay compensation. While placing reliance upon judgment in **National Insurance Co. Ltd.** v. **. Anjana Shyam**, 2007 ACJ 2129, Mr. Sharma contends that the insurance company can be made liable only in respect of

number of passengers from whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of other passengers involved in the accident in case of overloading.

8. Mr. Naveen K. Bhardwaj, Advocate, appearing for the claimants, while supporting impugned award, contends that since no evidence, if any, came to be led on record on behalf of appellant-Insurance Company that at the time of accident vehicle was overloaded, issue No. 7 rightly came to be decided against appellant-Insurance Company.

9. Having heard learned counsel for the parties, this Court finds that there is no dispute inter se parties with regard to alleged accident as well as death of Challo Devi, as such, this court need not go into that aspect of the matter. Similarly, there is no challenge, if any, with regard to findings given by learned Tribunal below that at the time of alleged incident, vehicle was being driven rashly and negligently by the driver of the ill-fated vehicle, who unfortunately, also expired in the accident. Primarily, challenge to the impugned award by appellant-Insurance Company is regarding overloading. On the basis of pleadings adduced on record, learned Tribunal below framed issue No.7, which reads as under:

> "7. Whether the offending vehicle at the time of accident was carrying more passengers against the

permissible limit of seating capacity of the vehicle?"

10. Claimant No.2, Hem Raj, stepped into witness box as PW-1 and furnished his evidence by way of affidavit Ext. PW-1/A and also examined PW-2 Sher Singh, and successfully proved the factum with regard to accident and death of Challo Devi, on account of rash and negligent driving by driver of the offending vehicle. On the other hand, owner of the vehicle, respondent No.5, successfully proved on record that the vehicle in question was insured at the time of accident by tendering in evidence copy of insurance policy, Ext. R-1, copy of RC Ext. R2, copy of fitness certificate Ext. R3. Similarly, owner of vehicle successfully proved on record that driver of offending vehicle was having valid and effective driving licence at the time of alleged accident. Interestingly, appellant-Insurance Company did not lead any oral evidence in support of its claim that at the time of alleged accident, vehicle was overloaded and same was being driven in violation of the terms and conditions insurance policy, rather, appellant-Insurance Company only tendered in evidence, Ext. RA i.e. insurance policy, perusal of whereof certainly reveals that the ill fated vehicle had seating capacity of 10 persons. Perusal of Ext. R1 and RA reveals that appellant-Insurance Company had

covered risk of 9 occupants plus one driver, meaning thereby in the event of accident or other eventuality, as envisaged in the insurance policy, appellant-Insurance Company was liable to indemnify insured on account of injuries and /or death of 10 persons, traveling in the vehicle in question. As has been taken note herein above, oral evidence never came to be led on record by appellant-Insurance Company suggestive of the fact that at the time of accident, more than 10 persons were traveling in the vehicle in question. FIR, Ext. PW-2/A, which stands duly proved on record also does not suggest that at the time of alleged accident, more than 10 persons were traveling in the ill fated vehicle rather, it reveals that in the alleged accident only 4-5 people lost their lives. None from appellant-Insurance Company stepped into witness box to state that at the time of accident, vehicle was being driven in violation of terms and conditions policy and more than 10 people were traveling therein.

11. Suggestion came to be put to PW-1, Hem Raj, in his cross-examination that at the time of alleged accident, vehicle was overloaded and Challo Devi did not pay any fare to travel in the vehicle but, aforesaid suggestion came to be denied by the aforesaid witness for want of knowledge., as such, no benefit, if any, can be claimed by appellant-Insurance Company from the aforesaid evidence, rather, appellant-

Insurance Company, with a view to prove overloading, if any, at the time of alleged accident, ought to have led positive evidence in this regard.

12. Though, in the case at hand, respondent No.1 raised an objection that the vehicle in question was not being driven in accordance with Motor Vehicles Act and terms and conditions of the insurance policy, but it has not led any evidence in support of their objection. Hon'ble Apex Court in **Dulcina Fernandes and others** vs. **Joaquim Xavier Cruz** and another, reported in (2013) 10 Supreme Court Cases 646, has reiterated that tribunals are to decide the cases keeping in view preponderance of probabilities and strict proof is not required. Otherwise also, it is well settled that strict proof in terms of Indian Evidence Act and Code of Civil Procedure is not required in the case under Motor Vehicles Act because it is not an adversarial litigation, rather, in such like litigation, courts are obliged to keep in mind purpose, aim and object of grant of compensation. A Coordinate Bench of this Court in FAO's Nos. 339 and 340 of 2008, titled National Insurance Company Ltd. Versus Smt. Parwati & others, decided on 3.1.2014, FAO No. 172 of 2006, titled Oriental Insurance Company Vs. Smt. Shakuntla Devi & Others has held that purpose of granting compensation is to be achieved without any delay and procedural wrangles and tangles, have no role

to play. Since in the case at hand, appellant-Insurance Company has not led any evidence in support of their pleadings, no fault, if any, can be found with the reasoning assigned by learned Tribunal below, while deciding issue No. 7 against appellant-Insurance Company.

13. True it is that in **Anjana Shyam** (supra), Hon'ble Apex Court has held that insurance company can be made liable only in respect of number of passengers from whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of other passengers involved in the accident in case of overloading but since, in the case at hand, appellant-Insurance Company has not been able to prove overloading, if any, at the time of accident in question, no benefit, if any, can be drawn from aforesaid judgment relied by appellant-Insurance Company and same cannot be applied in the present facts and circumstances of the case.

14. In view of detailed discussion made herein above, appeal is dismissed alongwith all pending applications, if any. Interim directions, if any, are vacated.

(Sandeep Sharma)
Judge

December 24, 2020
(vikrant)