

(2014) 09 SHI CK 0106

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No. 56 of 2007 a/w FAOs (MVA) Nos. 431 & 437/2007 and 61, 62, 63, 65 & 69 of 2010

Amar Nath

APPELLANT

Vs

Roshani Devi
 Oriental Insurance Company Ltd. Vs
Sanjay Kumar

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2015) 1 ShimLC 6

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

Bench : Single Bench

Advocate : G.C. Gupta, Senior Advocate, Vinod Sharma and Tara Singh Chauhan, Advocate for the Appellant; G.C. Gupta, Senior Advocate, Ajay Chandel, Dinesh Thakur, Pankaj Negi, Rajiv Jiwan, Tara Singh Chauhan, Vinod Sharma and Yashwardhan Chauhan, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—All these eight appeals have been preferred against the awards, passed on different dates, in different claim petitions, by the Motor Accident Claims Tribunal, Bilaspur, District Bilaspur, H.P. (hereinafter referred to as "the Tribunal"), which are outcome of a motor vehicular accident involving vehicle-bus bearing registration No. HP-24-3003, (hereinafter referred to as "the impugned awards"). Thus, I deem it proper to determine all these appeals by a common judgment.

2. In FAO No. 56 and 431/2007, the insurer-Oriental Insurance Company has questioned the impugned awards passed in MAC Petition No. 56 of 2004, dated 04.01.2007 and MAC Petition No. 73 of 2004, dated 10.07.2007, respectively, on grounds taken in the memo of appeals.

3. By the medium of FAO No. 437 of 2007, FAOs No. 61, 62, 63, 65 & 69/2010, owner-Amar Nath has questioned the impugned awards made by the Tribunal in MAC Petition No. 73 of 2004, dated 10.07.2007, MAC Petitions No. 66 of

2005/04, 69 of 2005/04, 98 of 2005/04, 75 of 2005/2004 and 68 of 2005/04, respectively, dated 29th December, 2009, on the grounds taken in the memo of appeals.

Brief Facts:

4. The claimants-injured and the dependants of deceased, namely, Shri Ravi Kant, Smt. Rama Devi, Smt. Rachna Devi, Shri Surjit Kumar, Shri Hem Raj and Shri Ajay Singh, being victims of the motor vehicular accident, which has allegedly been caused by driver, namely, Babu Ram, while driving vehicle-bus bearing registration No. HP-24-3003, rashly and negligently, on 21.12.2003, at about 11.20 a.m., near Dehar at Village Samlehu, Tehsil Sunder Nagar, District Mandi, the vehicle went off the road; fell into a gorge, as a result of which, 35-40 occupants sustained injuries and Shri Ravi Kant, Smt. Rama Devi, Smt. Rachna Devi, Shri Surjit Kumar, Shri Hem Raj and Shri Ajay Singh, succumbed to the injuries; filed claim petitions, before the Tribunal for grant of compensation, as per break-ups given in the respective claim petitions.

5. The respondents resisted the claim petitions on the grounds taken in the respective memo of objections.

6. The Tribunal, on the pleadings of the parties, framed common issues in all the death cases. It is apt to reproduce the issues framed in MAC Petition No. 73 of 2004:

1. Whether the deceased Rachna Devi had died due to rash and negligent driving of Shri Babu Ram respondent No. 2, driver of Bus No. HP-24-3003, as alleged?OPP

2. If issue No. 1 supra is proved, to what amount of compensation the petitioner is entitled to and from which of the respondents?OPP

3. Whether the driver of Bus No. HP-24-3003 did not have valid and effective driving license at the time of accident, if so, its effect? ...OPR-3

4. Relief.

7. Following issues came to be framed in MAC Petition No. 56 of 2004, i.e. injury case:-

"1. Whether the petitioner Sanjay Kumar suffered injuries on account of rash and negligent driving of Bus No. HP-24-3003 by the respondent No. 2, as alleged? ...OPP

2. In case issue No. 1 is proved to what amount of compensation and from whom is the petitioner entitled to? ...OPP

3. Whether the respondent No. 2 driver of bus No. HP-24-3003 was not having a valid and effective driving license, at the time of the accident, if so, its effect? ...OPR-3

4. Relief."

8. The insurer-Oriental Insurance Company has questioned the impugned awards passed in MAC Petitions No. 56 of 2004 and 73 of 2004, on the grounds that the owner had engaged a driver, namely, Babu Ram, who was not having a valid and effective driving licence at the time of accident; has committed willful breach and the Tribunal has fallen in error in saddling the insurer with liability, with right of recovery.

9. Admittedly, the driver was driving bus bearing registration No. HP-24-3003, at the relevant time and the owner was insured with the insurer-Insurance Company.

10. All the documents as well as the evidence on record do disclose that the driver was not having a valid and effective driving licence to drive the bus i.e. "heavy passenger motor vehicle". He was only competent to drive "light motor vehicle", as per the driving licence Ex. RW-4/A in MAC Petition No. 69 of 2005/04.

11. Neither the owner nor the driver has led any evidence to prove that the driver was having a valid and effective driving licence to drive "heavy passenger motor vehicle".

12. In terms of the documents on record, i.e. Registration Certificate Ext. R-B and Insurance Policy Ext. R.C., the vehicle in question was a passenger bus, having seating capacity of "42". Bus falls within the definition of "heavy passenger motor vehicle". Thus, the driver was not competent to drive the said vehicle.

13. The claimants in all the claim petitions are third parties. In terms of the mandate of Section 149 of the Motor Vehicles Act, 1988 read with the Insurance Policy, the insurer has to satisfy third party claim, with right of recovery.

14. Having said so, the Tribunal has rightly directed the insurer-Insurance Company to satisfy the awarded amount with right of recovery from the owner-insured.

15. The owner-insured has questioned the impugned awards on the ground that the Tribunal has fallen in error in saddling him with liability. The vehicle was insured and the insurer has to indemnify and satisfy the third party claim.

16. It was for the owner to establish that he had taken all steps to ascertain that the driver was having a valid and effective driving licence to drive a passenger bus. But the owner has not led any evidence to the effect that he has not committed any breach. The driver was not having a valid and effective driving licence to drive the vehicle in question at the time of accident. Thus, the Tribunal has rightly decided the said issue.

17. I have gone the impugned awards and record of the claim petitions and am of the considered view that the claimants have proved by leading evidence, oral as well as documentary, that the driver has driven the offending vehicle, rashly

and negligently. Thus, the Tribunal has rightly held that the accident was outcome of rash and negligent driving of the driver.

18. The Tribunal has also assessed the compensation in all the cases reasonably, cannot be said to be excessive, in any way, but is just and appropriate keeping in view the ratio laid down by the Apex Court in case titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and upheld by a larger Bench of the Apex Court in case titled as Reshma Kumari and Others Vs. Madan Mohan and Another, . The Tribunal has rightly awarded compensation to the tune of Rs. 4,14,000/-, in MAC Petition No. 73 of 2004, Rs. 2,44,000/- in MAC Petition No. 66 of 2005/04, Rs. 2,30,000/- in MAC Petition No. 69 of 2005/04, Rs. 2,61,000/- in MAC Petition No. 98 of 2005/04, Rs. 3,34,000/- in MAC Petition No. 75 of 2005/04 and Rs. 2,62,000/- in MAC Petition No. 68 of 2005/04, i.e. death cases and Rs. 76,640/- in MAC Petition 56 of 2004, i.e. injury case, with 7.5% interest per annum in all the cases.

19. The Tribunal has fallen in error in not granting right of recovery to the insurer-Insurance Company in terms of award dated 04.01.2007, passed in MAC Petition No. 56 of 2004, impugned in FAO No. 56 of 2007. The impugned award passed in the claim petition (supra) is modified by providing that the insurer has right of recovery.

20. Having said so, the all these appeals except FAO No. 56 of 2007, merit to be dismissed. Ordered accordingly.

21. FAO No. 56 of 2007 is disposed of, as indicated above.

22. Registry is directed to release the awarded amount in favour of the claimants, strictly as per the terms and conditions contained in the impugned awards.

23. Send down the records after placing copy of the judgment on the record.