(2015) 07 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : FAOs (MVA) Nos. 72 and 151 of 2008

Anil Kumar and Others — APPELLANT

Vs

Nitim Kumar and Others — RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, Order 13 Rule 3, Order 16 Rule 2, Order 16 Rule 21, Order 17 Rule 17
Motor Vehicles Act, 1988 — Section 169, 176 (b)

Citation : (2015) 07 SHI CK 0008

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

Bench : Single Bench

Advocate : Tara Singh Chauhah, for the Appellant

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J—These two appeals are outcome of a common judgment and award dated 31.10.2007, made by the Motor Accident Claims Tribunal, Bilaspur, H.P. in MAC No. 46 of 2004, hereinafter referred to as "the Tribunal, for short, whereby compensation to the tune of Rs. 2,15,500/- alongwith 6% interest came to be awarded in favour of the claimant and the insured was saddled with the liability, for short "the impugned award", on the grounds taken in the appeal.

2. The claimant has become victim of a vehicular accident on 23.9.2003 which was caused by the driver of Esteem Car bearing registration No. PB-02G-2301, namely, Nitin Kumar, while driving the offending vehicle rashly and negligently. It is averred that the injured/claimant has suffered 50% disability and is suffering mental disorder. The victim is a minor and the appeal has been filed through his natural guardian.

3. The insurer stands exonerated and has not questioned the impugned award.

4. The claimant has disputed the impugned award through the medium of FAO

No. 72 of 2008, on the ground of adequacy of compensation and the insured/ owner has questioned the impugned award by the medium of FAO No. 151 of 2008, on the ground of adequacy of compensation and also on the ground that the Tribunal has fallen in an error in discharging the insurer from its liability.

5. It pains me to record herein that an unfortunate boy has not been able to seek redressal from the Tribunal or from this Court for the last 12 years, is an eye opener for all the stake holders. It is beaten law of the land that the claim petition is to be decided, as early as, possible and the Tribunal or the High Court should not succumb to the procedural wrangles tangles or technicalities and others grounds. My this view is fortified by the judgment delivered by the apex court in Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another, (2013) 4 ACC 293 : (2013) ACJ 2712 : (2013) 10 AD 513 : AIR 2014 SC 58 : (2013) 13 JT 217 : (2013) 4 RCR(Civil) 751 : (2013) 12 SCALE 611 : (2013) 10 SCC 646 , N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, (1980) ACJ 435 : AIR 1980 SC 1354 : (1980) 41 FLR 152 : (1980) 3 SCC 457 : (1980) SCC(Cri) 774 : (1980) 3 SCR 101 : (1980) 12 UJ 414 and Oriental Insurance Co. versus Mst. Zarifa and others, reported in AIR 1995 Jammu and Kashmir 81.

6. It is also beaten law of the land that the claim petition is to be determined summarily and that is why the Code of Civil Procedure is not applicable. Some of the provisions of Code of Civil Procedure have been made applicable in terms of the provisions of the Rules framed by the Central Government as well as State Government. The State of Himachal Pradesh has also framed the Himachal Pradesh Motor Vehicle Rules, 1999 (for short "the Rules") in terms of Sections 169 and 176 (b) of the Motor Vehicles Act, and only some of the provisions of the Code of Civil Procedure have been made applicable.

7. It is apt to reproduce Rule 232 of the Rules herein:

"232. The Code of Civil Procedure to apply in certain cases:-

The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII; Rule 3 to 10; Order XVI, Rules 2 to 21; Order XVII; Order XXI and Order XXIII, Rules 1 to 3."

8. There is no dispute about the rash and negligent driving of the driver. Thus, the findings returned on Issue No. 1 are upheld.

9. I deem it proper to determine whether the Tribunal has rightly exonerated the insurer from the liability.

10. Mr. Ashwani K. Sharma, learned counsel for the insurer argued that the vehicle was not insured and the particulars of the vehicle given in FIR, in the insurance policy and cover note, are different. The Tribunal has rightly made the discussions in paras 33 to 38 of the impugned award.

11. I have gone through the findings returned by the Tribunal. The Tribunal has

rightly made the discussion and it is apt to reproduce paras 37 and 38 of the impugned award herein:

"37. It is quite evident from Ext. R-2, the insurance cover note, and Ext. R-A the insurance policy that the vehicle which has been insured with respondent No. 3 is Maruti Car 800 Ord. having registration No. PB-02E-2301, there is nothing on record which could go to show that due to clerical mistake, on the part of the officials of the insurance company (respondent No. 3), the make of the vehicle involved in the accident, i.e. Esteem Car has been entered as Maruti 800-Ord. I would like to point out that the clerical error could have occurred either in the insurance cover note or in the insurance policy and not in both these documents. Moreover, in the aforesaid documents, the insured declared value of the vehicle has been stated to be Rs. 50,000/-. In case, as per this insurance policy, Esteem Car would have been insured, it is insured declared value would have been much more than Rs. 50,000/- because it is a more expensive Car than ordinary Maruti 800. In this way, on the record, it is not proved that the Esteem Car had been insured with respondent No. 3 vide insurance policy Ext. RA which has been issued on the basis of insurance cover note Ext. R-2.

38. Since, the Esteem Car has not been proved to be insured with respondent No. 3, it is not liable to indemnify the owner of Esteem Car viz. respondent No. 2. Consequently, I hold that respondent Nos. 1 and 2 being the driver and owner of the Esteem Car, at the relevant time, are jointly and severally liable to pay the aforesaid amount of compensation. This issue is decided accordingly."

12. Having said so, the Tribunal has rightly exonerated the insurer from its liability.

13. Now coming to the adequacy of compensation. On the face of it, a meager amount has been awarded by the Tribunal. It is beaten law of the land that the compensation is not a booty or boon in the disguise. The compensation has to be awarded while keeping in view percentage of the injury and the loss, the claimants have suffered. A young boy has been made to suffer for his whole life. He is mentally retarded and doctor has declared him 45% disabled. The disability is not denied and there are prescriptions on the files which do disclose that he was admitted in the hospital, was discharged as is evident from Ext. RW 2/C, Ext. PW 2/D and Ext. PW 2/E. There are also documents on the file, which are duly proved, which do disclose that what amount has been spent by him for his treatment. Copy of FIR also does disclose that the accident had taken place.

14. The claimant has not only suffered from one angle. He is not in a position to get married of his choice, thus has not only destroyed his matrimonial home but has shattered his physical frame and earning capacity. He is virtually become a burden on his parents.

15. A son is supposed to hope and help for their parents, but he has become dependent on them. He has to abandon his studies which is proved by evidence and the Tribunal has discussed this aspect in para 21 of the impugned award.

Despite this fact, the Tribunal has shut its eyes.

16. Keeping in view R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, (1995) 1 ACC 281 : (1995) ACJ 366 : AIR 1995 SC 755 : (1995) 1 JT 304 : (1995) 110 PLR 298 : (1995) 1 SCALE 79 : (1995) 1 SCC 551 : (1995) 1 SCR 75 : (1995) 1 UJ 407 , the amount which was to be awarded under the head "pain and suffering" is Rs. 1 lacs, for the "lost of amenities of life" Rs. 1 lacs and Rs. 2 lacs under the head "loss of income". Total amounting to Rs. 4 lacs. Expenditure on medicines Rs. 20,000/-, Transport charges Rs. 20,000/-, Special diet Rs. 10,000/- and attendant charges Rs. 18000/- as awarded by the Tribunal, are maintained.

17. Viewed thus, the claimant is entitled to Rs. 4,00,000/- + Rs. 68,000/- total amounting to Rs. 4,68,000/- with interest @ 6% per annum from the date of claim petition till its realization, as awarded by the Tribunal.

18. In the given circumstances, the appeal filed by the appellant/owner is dismissed.

19. Having said so, the appeal filed by the claimant is allowed and the impugned award is modified as indicated hereinabove and the appeals are disposed of accordingly.

20. The owner is directed to deposit the award amount within six weeks in the Registry of this Court from today. On deposit, the Registry is directed to release the same in favour of the claimant, strictly in terms of the conditions contained in the impugned award.

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

