

(2014) 11 SHI CK 0030

In the High Court Of Himachal Pradesh

Case No : FAO Nos. 430 of 2010 and 76 of 2011

Ato Devi

APPELLANT

Vs

Bobby Bus Service
 The New India Assurance
Company Vs Ato Devi

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 11 SHI CK 0030

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

Bench : Single Bench

Advocate : B.M. Chauhan and Naresh Kaul, Advocate for the Appellant; Naresh Kaul, Pushpinder Jaswal and B.M. Chauhan, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—Both these appeals are outcome of award, dated 1st June, 2010, made by the Motor Accident Claims Tribunal, Chamba Division, Chamba, H.P. (hereinafter referred to as "the Tribunal") in MAC Petition No. 32 of 2008, titled as Smt. Ato Devi and others versus Bobby Bus Service and others, whereby compensation to the tune of Rs. 6,29,950/- with interest @ 12% per annum from the date of filing of the petition till its realization came to be awarded in favour of the claimants and the insurer was saddled with liability (hereinafter referred to as "the impugned award"), thus, I deem it proper to dispose of both these appeals by this common judgment.

2. The insurer has questioned the impugned award by the medium of FAO No. 430 of 2010 on the ground that the Tribunal has fallen in error in saddling it with liability and the amount awarded in excessive.

3. The claimants have called in question the impugned award by the medium of FAO No. 76 of 2011 on the ground of adequacy of the compensation.

Brief facts:

4. The claimants, being the victims of the motor vehicular accident, invoked the

jurisdiction of the Tribunal in terms of Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") for grant of compensation on the grounds taken in the memo of claim petition.

5. The case, as presented by the claimants in the claim petition, was that deceased-Shiv Charan, who was 22 years of age, while going towards Hamirpur, met with an accident on 26th January, 2008, at place Mandir Bil Bani Mod near Rit Bhatha, P.S. Nadaun, which was caused by the driver, namely Shri Vipin Singh, who was driving bus, bearing registration No. HP-55B-6701, rashly and negligently. He was taken to Primary Health Center, Nadaun, wherefrom was shifted to PGI Chandigarh and succumbed to injuries on 29th January, 2008, at 2.45 a.m. The claimants had sought compensation to the tune of Rs. 25,00,000/-, as per the break-ups given in the claim petition.

6. The owner-insured, the driver and the insurer contested the claim petition on the grounds taken in the respective memo of objections.

7. Following issues came to be framed by the Tribunal on 16th March, 2009:

"1. Whether deceased Shiv Charan died due to rash and negligent driving of vehicle No. HP-55B-6701 by respondent No. 3 Vipin Singh as alleged? OPP

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

3. Whether the petition is not maintainable as alleged? OPR

4. Whether the petition is bad for non joinder of necessary parties? OPR-2

5. Whether the petitioner Nos. 2 and 3 were not dependent upon the deceased as alleged? OPR-2

6. Whether the vehicle in question was being used in contravention of its authorized use, if so, to what effect? OPR-2

7. Whether driver of the vehicle in question was not holding a valid and effective driving licence as alleged? OPR-2

8. Relief."

8. The claimants have examined Constable Janak Raj as PW-2, Shri Amar Nath as PW-3, Shri Yogender Singh as PW-4 and one of the claimants, Smt. Ato Devi, has herself stepped into the witness box as PW-1. The respondents in the claim petition have not examined any witness except the driver, Shri Vipin Singh, has stepped into the witness box as RW-1.

Issues No. 1 and 3 to 6:

9. The claimants have proved by leading evidence, oral as well as documentary, that the driver, namely Shri Vipin Singh, had driven the offending vehicle rashly and negligently and FIR No. 18 of 2008, Ext. PW-2/A, was lodged at Police

Station Nadaun, District Hamirpur.

10. The findings returned by the Tribunal on issues No. 1 and 3 to 6 are not in dispute for the reason that the claimants have questioned the impugned award on the ground of adequacy of compensation and the insurer has questioned the same on the grounds that the owner-insured has committed willful breach as the driver of the offending vehicle was not having valid and effective driving licence at the relevant point of time and the amount awarded is excessive. However, I have gone through the claim petition and the record. Issues No. 1 and 3 to 6 have rightly been decided by the Tribunal in favour of the claimants and against the respondents, are, accordingly, upheld.

11. Before I deal with issue No. 2, I deem it proper to determine issue No. 7.

Issue No. 7:

12. The Tribunal has discussed the evidence and held that the driver was having the valid and effective driving licence. The driving licence is on the record as Ext. R-2, which do disclose that it was issued by the Registration and Licensing Authority, Nadaun, District Hamirpur, and was valid at the time of accident. The insurer has not led any evidence to discharge the onus to prove the issue.

13. There is no record on the file, not to speak of proof, to show that the driver of the offending vehicle was not having a valid and effective driving licence. Perusal of the copy of the driving licence, Ext. R-2, discloses that the driver was having a valid and effective driving licence. Thus, the Tribunal has rightly decided issue No. 7 against the insurer and saddled it with liability, is accordingly upheld.

Issue No. 2:

14. Admittedly, the deceased was a Government employee, was drawing gross salary of Rs. 7604/-, in terms of the Last Pay Certificate, Ext. PA. The claimants are three in number and the deceased was bachelor. Applying the ratio laid down by the Apex Court in Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, reported in (2009) 6 Supreme Court Cases 121, which was upheld by a larger Bench of the Apex Court in Reshma Kumari & Ors. versus Madan Mohan & Anr., reported in 2013 AIR SCW 3120, one-third was to be deducted for the reason that the claimants, i.e. mother has lost her budding son, who was the only source of hope and help in her old age, was dependent upon him and the brother & sister have lost their brother in budding age, was source of their hope and help and were deprived of love and affection of their brother.

15. Thus, the Tribunal has rightly deducted one-third, but has fallen in error in holding that the claimants have lost source of income to the tune of Rs. 3,333/- per month. It can be safely held that the claimants have lost source of income to the tune of Rs. 5,000/- per month after deducting one-third. Hence, the claimants have lost source of income to the tune of Rs. 60,000/- (Rs. 5,000/- x 12) per annum.

16. Keeping in view the age of the deceased and the claimants, the Tribunal has rightly applied multiplier of "13", which is appropriate multiplier.

17. Viewed thus, the claimants are held entitled to compensation to the tune of Rs. 7,80,000/- (Rs. 60,000/- x 13). The mother is also held entitled to Rs. 2,000/- under the head "funeral expenses" and Rs. 2,500/- under the head "loss of estate".

18. It appears that the Tribunal has fallen in error in awarding interest @ 12% per annum, which is at higher side in view of the law laid down by the Apex Court read with the rates of the Reserve Bank of India. Accordingly, it is held that the claimants are entitled to interest @ 7.5% per annum from the date of filing of the claim petition till its realization. The impugned award is modified accordingly.

19. Having glance of the above discussion, both the appeals are disposed of and the impugned award is modified, as indicated hereinabove.

20. The insurer is directed to deposit the enhanced awarded amount before the Registry within twelve weeks. On deposition of the same, the Registry is directed to release the awarded amount in favour of the claimants, out of which, 50% of the amount be released in favour of claimant No. 1 and the remaining 50% in favour of claimants No. 2 and 3 in equal shares after proper identification.

21. Send down the record after placing copy of the judgment on Tribunal's file.

22. A copy of this judgment be also placed on the file of FAO No. 76 of 2011.