
(2020) 07 SHI CK 0228

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order (MVA) No. 406 Of 2019

Bharti Axa General Insurance Company Limited

APPELLANT

Vs

Anchal Chauhan And Another

RESPONDENT

Date of Decision : 13-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2020) 07 SHI CK 0228

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Chandan Goel, Mohar Singh, Jagmohan Chandel

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

1. By way of this appeal, the appellant/ Insurance Company has challenged the award passed by the Court of learned Motor Accidents Claim Tribunal-II, Shimla, H.P. in MACP No.900239 of 2016, CNR HPSH100003252016, titled as Anchal Chauhan Versus Bahita Thakur & another, dated 21.05.2019, vide which following relief has been granted by the learned Tribunal in favour of the claimant:-

"35. As a sequel to my findings on all issues above, the instant claim petition is partly allowed. The petitioner is awarded compensation of Rs.1,61,910/- along with interest @ 9% per annum, from the date of filing of this petition till payment as approved by the Hon'ble Supreme Court in case titled as "Rana Rao Lala Borse & anr. Vs. New India Assurance Company Ltd." 2018 (1) SLT 368. the respondent no.2 is held liable to pay this compensation. This award is inclusive of amount, if any, awarded under Section 140 of the Act.

36. Out of aforesaid awarded amount to the petitioner, 50% be released to her and remaining 50% amount be deposited in fixed deposit in some nationalized bank, initially for 37 months".

2. Brief facts necessary for the adjudication of the present appeal are that a claim petition was filed by Anchal Chauhan for grant of compensation, on account of permanent injury sustained by her in an accident involving the vehicle bearing Registration No.HP 52A-7731, which took place on 30. 05.2016 at Beolia, Panthaghati, Shimla, H.P., at around 6.00 p.m. As per the claimant, she was twenty three years old and a student of APG University. She suffered injuries while travelling in the ill-fated vehicle, which met with an accident as mentioned above, on 30.05.2016. She was a student of Hotel Management and Tourism and suffered injuries in the accident involving the ill- fated vehicle, which was being driven in a rash and negligent manner by its driver, who unfortunately died in the accident. The claimant sustained multiple injuries and fractures and remained admitted in Indira Gandhi Medical College and Hospital at Shimla, H.P., from 31.05.2016 to 19.06.2016. Her left shoulder was operated and iron plates were inserted in the same. She incurred an expenditure of Rs.60,000/- on her medicines, Rs.20,000/- on special diet and an amount of Rs.20,000/- on account of keeping an attendant. She claimed compensation to the tune of Rs.5,00,000/- alongwith interest on the ground that she had become dependent upon her family and was not even in a position to perform her day to day routine work.

3. Petition was resisted by the respondents in the claim petition, who were the owners of the vehicle and the Insurance Company, respectively (i.e. the present appellant). The petition was resisted by the owner inter alia on the ground that the vehicle in issue was taken away from the custody of the owner without her knowledge by the driver, whereas, the Insurance Company took the stand that it was not liable to indemnify the claimant as there was violation of the provisions of Motor Vehicles Act, because the driver was not holding an effective and valid Driving Licence to drive the vehicle in issue and the vehicle was being driven in violation of the terms and conditions of the Insurance Policy. As per the Insurance Company, the vehicle was not having a valid Registration Certificate, Fitness as well as Route Permit for being plied.

4. On the basis of the pleadings of the parties, learned Tribunal framed following issues:-

"1. Whether the petitioner on 30.05.2016, at about 6:00 pm, near Beolia School, Shimla, sustained multiple injuries due to rash and negligent driving of deceased driver Abhishek Mehra, while he was driving vehicle bearing registration no.HP-52A-7731, as alleged? OPP

2. In case issue no.1 is proved in affirmative, whether the petitioner is entitled for compensation, if so, to what extent and from whom? OPP

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

4. Whether the petition does not disclose any cause of action, as alleged? OPR

5. Whether the keys of the vehicle in dispute were taken without the consent of the respondent no.1, as alleged? OPR

6. whether the petitioner has no locus-standi to file the present petition, as alleged? OPR-2

7. Whether the petition is a result of collusion with respondent no.1, as alleged? OPR-2

8. Whether the owner/injured has violated the provisions of Motor Vehicles Act, as alleged? OPR-2

9. Whether the vehicle in question was being driven in contraventions of the terms and conditions of the insurance policy, as alleged? OPR-2

10. Whether the petition is bad for non-joinder of necessary parties, as alleged? OPR-2

11. whether the deceased driver was not driving the vehicle in question, as alleged? OPR-2

12. Relief".

5. On the strength of the evidence which was led by the parties in support of their respective stands, the issues so framed by the learned Tribunal were answered as under:-

"Issue No.1 : Yes

Issue No.2 : Yes, answered accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Issue No.10 : No

Issue No.11 : No

Relief : Petition is partly allowed as per operative part of the award".

6. The claim petition, was partly allowed by the learned Tribunal in the terms as already stand spelled out hereinabove.

7. While answering issues No.1 and 2, learned Tribunal held that the petitioner examined PW-1 LHC Ramesh Lata, who proved F.I.R. No.60 of 2016, dated 30.05.2016, registered under Sections 279, 337 and 304-A of Indian Penal Code (Ext.PW1-A), in which untraced report stood prepared.

8. Claimant herself entered the witness box as PW-2 and testified that on the ill-fated date, i.e. on 30.05.2016, she was travelling in the vehicle with her college friends and were on their way to the college. When they reached near Beolia, the vehicle went out of the road on account of rash and negligent driving of the driver, due to which she sustained injuries. She remained admitted in the hospital for one month and needed attendant day and night during that period. Besides, for entire one year after her discharge, she needed an attendant as she remained at home for the said period as her left arm did not function on account of a plate having been inserted. She deposed that she could not study the entire year and all her works were performed by her attendant. She went for physiotherapy and had spent an amount of Rs.2,00,000/-generally for these acts. She also stated that she had undergone one more operation. In her cross-examination, she deposed that she knew Akash Chauhan and Abhishek Mehra, as they used to study in the same University. She admitted that at the fateful time, both Akash Chauhan and Abhishek Mehra were sitting in the vehicle and were drunk, though they had not consumed drinks in her presence. She deposed that owner of the vehicle was Nikhil, but she did not remember the registration number of the vehicle. She stated that she was not aware that Akash Chopra and Abhishek Mehra had forcibly taken the keys of the vehicle from the owner.

9. Dr. Sandeep Kashyap entered the witness box as PW-3 and proved Discharge Slip Ext.PW3/B, which was issued by him, proving that Anchal Chauhan remained admitted in the hospital from 31.05.2016 to 19.06.2016 and that she was operated upon on 02.06.2016. This witness deposed that operation would have cost approximately Rs.40,000/- to Rs.45,000/-. He also proved treatment bills of claimant as Ext.PW3/B-1 to Ext.PW3/B-48. This witness also deposed that operation as well as the plates which were inserted in the shoulder of the claimant would cost between Rs.15,000/- to Rs.20,000/-.

10. Owner of the vehicle (Babita Thakur) entered the witness box as RW-1 and stated that she was the owner of the vehicle bearing registration No.HP-52A-7731. She stated that the vehicle was taken by her son Nikhil Singh Thakur on 30.05.2016 to APG University, Shimla. She also deposed that the friend of her son Abhishek Mehra had taken the keys of the vehicle. She deposed that Abhishek Mehra died in the accident. She denied that she was told during the course of investigation that Abhishek Mehra was drunk.

11. SI Seva Singh entered the witness box as RW-2 and he deposed that the vehicle in issue was being driven by Abhishek Mehra, who had died in the accident. He deposed that during the course of investigation, it was found that Abhishek Mehra was driving the vehicle in a rash and negligent manner after consuming drinks.

12. RW-3 Naresh Kumar deposed that as per official information, 222.44 mg% alcohol was found in the blood of Abhishek Mehra in terms of Ext.PW3/B and therefore, the company was not liable to indemnify the owner. He admitted that the policy was a third party cover.

13. On the basis of evidence on record, learned Tribunal held that it stood proved that the accident took place due to rash and negligent driving of deceased driver Abhishek Mehra, as there was no rebuttal to this evidence and that it also stood proved that petitioner had suffered multiple grievous injuries on account of the rash and negligent driving of the deceased driver of the vehicle.

14. With regard to the assessment of damages, to which the claimant was entitled, learned Tribunal after referring to certain judgments as stand mentioned in the award and after taking into consideration the statements of the claimant as well as Dr.Sandeep Kashyap (PW-3), held that though claimant had pleaded that she had spent more than Rs.1,00,000/- on her treatment, but bills produced on record demonstrated that she had spent an amount of Rs.51,910/- for the said purpose. Learned Tribunal held that claimant remained hospitalized for twenty days and during this period, she must have been attended by at least two attendants and after her discharge from hospital, she must have been attended at least by one attendant, as it was stated by PW-3 Dr. Sandeep Kashyap that it would take at least six months for the claimant to heal. On this count, learned Tribunal granted compensation to the tune of Rs.5,000/- per attendant, for two attendants for one month, and for remaining five months, it granted compensation to the tune of Rs.5000/- for one attendant. Learned Tribunal also granted compensation to the tune of Rs.25,000/- for special diet by holding that as claimant had obtained treatment as an Indoor Patient, she must have taken some special diet. It further held that there was nothing on record to demonstrate that claimant had suffered any pecuniary loss due to injuries and/or that claimant had suffered any permanent disability. Learned Tribunal held the claimant entitled for compensation for an amount of Rs.1,11,910/- as pecuniary damages.

15. Under the heading of non-pecuniary damages, learned Tribunal granted an amount of Rs.50,000/- in favour of the claimant on account of the pain, suffering and trauma as a consequences of the injuries and disfigurement suffered by her by taking into consideration the fact that the claimant had suffered multiple grievous injuries on account of the accident and she remained hospitalized from 31.05.2016 to 19.06.2016 and was also operated during this period.

16. While answering issues No.3 to 11, learned Tribunal held that evidence on record demonstrated that Abhishek Mehra was driving the vehicle and had died in the course of the accident. It further held that there was no collusion between the petitioner with respondent No.1 and the keys of the vehicle were taken by the son of the owner of the vehicle, who had gone to the University, where he was studying. On these basis, learned Tribunal held that the keys were taken by her son with the consent of the owner of the offending vehicle.

17. On the issue of the deceased being intoxicated, by relying upon the judgment of this Court titled as "Khem Chand Versus Smt. Uma Devi and others" Latest HLJ 2010 (HP) 1, as well as "Oriental Insurance Company Versus Sangeyum an ors." 2016 ACJ 783, learned Court held that the Insurance

Company cannot take this defence to wriggle out of its liability. Learned Tribunal, thus, allowed the claim petition partly, by awarding compensation to the tune of Rs.1,61,910/- alongwith interest @ 9% per annum from the date of filing of the petition, till payment, in terms of the judgment of Hon'ble Supreme Court in case titled as "Rama Rao Lala Borse & anr. Versus New India Assurance Company Ltd." 2018 (1) SLT 368 and further held the Insurance Company liable to pay the compensation.

18. Feeling aggrieved, the Insurance Company has filed this petition.

19. Learned Counsel for the appellant argued that the award passed by learned Court below was not sustainable in the eyes of law as while passing the award, learned Court erred in not appreciating that there were major violations of the terms and conditions of the Insurance Policy, as the vehicle was being driven by the driver without the consent of the owner of the vehicle and further as the driver was intoxicated, therefore also, the vehicle was being driven in violation of the terms and conditions of the policy. He further argued that the award of an amount of Rs.35,000/- in favour of the claimant by the learned Tribunal as charges of attendants was also not sustainable in the eyes of law, as this amount was granted by the learned Tribunal without appreciating that there was no evidence led by the claimant to prove that she had engaged any attendant. No other point was urged.

20. On the other hand, learned counsel for the respondents, while supporting the award passed by the learned Tribunal argued that the findings returned by the learned Tribunal to the effect that there was no violation of the terms and conditions of the Insurance Policy, were duly borne out from the record of the case and it stood proved on record that as the keys of the vehicle were taken by the owner of the vehicle, therefore, it could not be said that the same was without the consent of the owner of the vehicle. They further argued that it was a matter of record that the claimant remained admitted in the hospital and underwent surgery over there and it further stood proved from the statement of PW-3 Dr. Sandeep Kashyap that the period of recovery of the claimant was six months. In this background, as per them, learned Tribunal rightly granted Rs.35,000/- as charges of attendants, which though was on the lower side, as by no stretch of imagination, it could be said that the claimant was in a position to look after herself without an attendant. Accordingly, they prayed that as there was no merit in the appeal, the same be dismissed.

21. Having heard learned counsel for the parties and having gone through the award passed by the learned Tribunal as well as the record of the case, this Court is of the view that there is no infirmity or perversity with the award under challenge.

22. The plea of the appellant that there was a violation of the policy is not sustainable in law because during the course of the arguments, learned counsel for the appellant could not point out, as to which particular Clause of the

Insurance Policy was violated by the owner of the vehicle. His first contention that the vehicle was being driven without the consent of the owner is without merit because as it stands proved on record that the vehicle was taken by the son and the friends of the son of the owner of the vehicle, it cannot be held that the same was taken away without the consent of the owner.

23. The plea taken by the Insurance Company that the vehicle was not having a valid Registration Certificate, or Route Permit etc. has not been substantiated on record.

24. Similarly, the factum of the deceased driver being intoxicated at the time when the accident took place, has been taken care of by the learned Tribunal by substantiating its findings on the strength of the judgments of this Court, which clearly laid down the law that on this plea, the Insurance Law cannot wriggle out of its liability. Therefore, it cannot be said that the learned Tribunal erred in holding that even though the driver at the time of the unfortunate accident, might be intoxicated, yet the onus to compensate the claimant was upon the Insurance Company. This Court reiterates that findings returned to this effect by the learned Tribunal are well reasoned.

25. Coming to the other plea of the learned counsel for the appellant that the amount of Rs.35,000/- which has been awarded by the learned Tribunal as attendant charges is without there being any evidence on record to prove the same, in my considered view, this plea of the Insurance Company is liable to be rejected primarily on two counts: (a) the amount otherwise is so meager that it calls for no intervention for the simple reason that it is not in dispute that the claimant had suffered multiple grievous injuries in the accident in issue and: (b) the findings returned by the learned Tribunal to this effect are based on the record that the petitioner was hospitalized from 31.05.2016 to 19. 06.2016 as well as in terms of the statement of Dr.Sandeep Kashyap (PW-3), who deposed that claimant required at least six months' time recover from her injuries. In addition, amount of Rs.5,000/- per attendant, for two attendants, for one month and for one attendant for five months, is otherwise also reasonable and the same, therefore, also calls for no interference.

26. Accordingly, in view of the findings returned hereinabove, as this Court does not finds any merit in the appeal, the same is dismissed. Pending miscellaneous applications, if any, stand dismissed. Interim order, if any, also stands vacated.