

(2021) 03 SHI CK 0117

In the High Court Of Himachal Pradesh

Case No : First Appeal Order (MVA) No. 269 Of 2020

Future General India Insurance Company Ltd

APPELLANT

Vs

Saroj Kumari And Others

RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2021) 03 SHI CK 0117

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Chandan Goel, Surinder Saklani, Saurav Rattan

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Appellant-Insurance Company was proceeded ex-parte by the learned Motor Accident Claims Tribunal (III) Kangra at Dharamshala, District Kangra, H.P. vide order dated 29.03.2016. Eventually, an award was passed on 25.02.2019, in favour of the claimants for an amount of Rs.8,59,828/- alongwith interest. Aggrieved, the Insurance Company has preferred the instant appeal.

2. Before proceeding further, it may be noticed at this stage that the Insurance Company had not challenged the order dated 29.03.2016, whereby it was proceeded against ex-parte and finally an ex-parte award was passed against it. In fact, in the present appeal, on 2.12.2020, learned counsel for the appellant had made a statement that the appellant would not press this ground in the instant appeal. Relevant extract from the order dated 2. 12.2020 is as under:-

"The award passed by the learned Motor Accident Claims Tribunal (III), Kangra at Dharamshala, on 25.02.2019, has been assailed in the instant appeal on various grounds including the one that the learned Tribunal below had wrongly proceeded against the appellant ex- parte vide order dated 29.03.2016. To a query of the Court, learned counsel for the appellant submitted that no steps were taken by it

for getting the ex-parte award set aside before the learned Tribunal below. Accordingly, on the basis of instructions imparted to him, learned counsel for the appellant fairly conceded that having not adopted the legal recourse for getting the ex-parte order and award set aside before the learned Tribunal below, the appellant will not press this ground in the instant appeal. His statement is taken on record."

The grounds raised by the Insurance Company for assailing the impugned award, therefore, have to be examined in light of the above statement made on behalf of the appellant (extracted above).

3. Encapsulated facts are that on 25.05.2013, one Sh. Baldev Singh was travelling on a motor cycle bearing Registration No. HP-37A-9870 as a pillion rider. At a place near 'Darang' the bike was stopped, the occupants of the bike started talking to a third person standing on the road side. At around 6.05 P.M, a pick up bearing Registration No. HR-37C-3662 coming from 'Nagrota' side struck the bike. Due to its impact, all three persons i.e. two occupants of the motor cycle and the person standing on the road side sustained injuries and died. The widow, two minor sons and parents of the deceased Baldev Singh (pillion rider) instituted a claim petition on 23.06.2014 under Section 166 of the Motor Vehicles Act praying for a compensation of Rs.20 lacs. The Insurance Company was proceeded ex-parte on 29.03.2016.

Learned MACT held that the accident had occurred due to rash and negligent driving of the vehicle No. HR -37C-3662 driven by respondent No.6/Sanjay Kumar. After holding that the accident had occurred due to rash and negligent driving of respondent No.6/Sanjay Kumar, learned Tribunal assessed the income of deceased Baldev Singh on the basis of minimum wages payable to labourers at Rs. 180/- per day i.e. Rs. 5400/- per month. At the time of his death, the deceased was held to be in the age group of 46 years and accordingly multiplier of 13 was applied. Payable compensation was determined in accordance with law laid down by the Hon'ble Apex Court in National Insurance Company Vs. Pranay Sethi and Ors, 2017 (4) ACJ 2700. Accordingly, the claimants were held to be entitled to compensation amount of Rs. 8,59,828/- alongwith an interest @ 7.5 % per annum.

4(i) The appellant has challenged the award on the ground that the accident had not occurred on account of negligence of Respondent No.6/Sanjay Kumar while driving vehicle bearing Registration No. HR-37C-3662. The precise contention of learned counsel for the appellant is that the accident had occurred on account of rash and negligent driving of another vehicle i.e. TATA Ace Zip. Learned counsel submitted that learned Motor Accident Claims Tribunal had committed an illegality in holding that the accident had occurred on account of rash and negligent driving of Vehicle No. HR-37C-3662 by respondent No.6/Sanjay Kumar (insured by the appellant). In support of his contention, learned counsel for the appellant placed heavy reliance upon a copy of FIR (Mark-A). As per the FIR, three persons riding on the motor cycle were behind the TATA Ace Zip, which was

being driven rashly and negligently. Because of sudden break applied by TATA Ace Zip, these three persons on the motor cycle had dashed with it and fell on vehicle No. HR-37C-3662. Therefore, the contention of learned counsel for the appellant is that the findings of learned MACT that the accident had occurred on account of rash and negligent driving of respondent No.6/ Sanjay Kumar (driver of vehicle No. HR-37C-3662) is erroneous. Consequently, the appellant-Insurance Company could not be held to be liable to pay the amount of compensation.

4(ii) Record shows that FIR (Mark-A) was tendered in evidence by respondent No.7/owner of Vehicle No. HR-37C-3662. It was not proved in accordance with law. The author of the FIR, Sh. Ram Kumar, was not produced the witness box. There was thus no opportunity to the claimants to cross-examine the author of the FIR vis-a-vis the issue of negligence on the part of respondent No.6/Sanjay Kumar. It has also come in the evidence that Sh. Ram Kumar was known to respondents No.6 & 7.

4(iii) The deposition of an eye-witness Anish Kumar also assumes significance. He appeared as PW-3 and stated that on the date of the accident, he had stopped his motor-cycle at 'Darang' for having tea. A motor Cycle bearing registration No. HP-37A-9870 came from Palampur, driven by one Sh. Vinay with Baldev (deceased) as the pillion rider. The motor-cycle had stopped as the occupants while sitting on the motor cycle had started talking to a person standing alongside the road. At the same time, a vehicle bearing No. HR-37C-3662 came from 'Nagrota' side and struck them. He has also stated that the motor cycle in question was stopped about 10 meters ahead to his own motor-cycle and that at the spot there were 50-60 people. It is significant to note here that the eye witness had admitted the suggestion given by the counsel for the respondents that he had witnessed the occurrence of the accident. He did not report the matter to the police as he had gone to the house of the claimants and informed them about the accident at around 7.00 P.M. PW-3 specifically denied that the accident took place due to rash and negligent driving of any TATA Act Zip. Post-mortem report Ext. PW2/A reflected that Baldev Singh had died due to injuries sustained in accident.

4(iv) In 2021 (1) SCC 171, titled Anita Sharma and Others Vs. New India Assurance Company Limited and Another, Hon'ble Supreme Court reiterated well established principle that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of pre-ponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to file fault with non examination of some best eye witnesses, as may happen in a criminal trial but instead the material placed on record should be analysed to ascertain whether claimant's version is more likely than not true. Relevant paras of the judgment are extracted hereunder:-

"17. Unfortunately, the approach of the High Court was not sensitive enough to

appreciate the turn of events at the spot, or the appellant claimants' hardship in tracing witnesses and collecting information for an accident which took place many hundreds of kilometers away in an altogether different State. Close to the facts of the case in hand, this Court in *Parmeshwari v. Amir Chand*, viewed that: (SCC p.638, para 12).

"12. The other ground on which the High Court dismissed the case was by way of disbelieving the testimony of Umed Singh, PW 1. Such disbelief of the High Court is totally conjectural. Umed Singh is not related to the appellant but as a good citizen, Umed Singh extended his help to the appellant by helping her to reach the doctor's chamber in order to ensure that an injured woman gets medical treatment. The evidence of Umed Singh cannot be disbelieved just because he did not file a complaint himself. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

(emphasis supplied)

18. The failure of the respondents to cross examine the solitary eye witness or confront him with their version, despite adequate opportunity, must lead to an inference of tacit admission on their part. They did not even suggest the witness that he was siding with the claimants. The High Court has failed to appreciate the legal effect of this absence of cross-examination of a crucial witness.

21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with nonexamination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

22. A somewhat similar situation arose in *Dulcina Fernandes v. Joaquim Xavier Cruz*⁴ wherein this Court reiterated that: (SCC p.650, para 7)

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set (2013) 10 SCC 646. up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of

proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC "(emphasis supplied)")

Hon'ble Apex Court on 14.02.2019, in Civil Appeal No.1665/2019, titled Sunita & Ors Vs. Rajasthan State Road Transport Corporation & Anr., held as under:-

"----It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

4(v) In the instant case, appellant-Insurance Company was proceeded against ex-parte. It has not challenged the order whereby it was proceeded against ex-parte. It has specifically given up this ground in the instant appeal as recorded in the order dated 2.12.2020. PW-3 Anish Kumar an eye witness to the accident has supported the claimants' version & very specifically stated that the accident occurred on account of rash & negligent driving of respondent No.6 driving vehicle No.HR 37C 3662. He has denied that accident occurred on account of any TATA Ace Zip vehicle. The author of the FIR relied upon by learned counsel for the appellant, was not produced in the witness box. The FIR (Mark-A) was not even proved in accordance with law. In light of evidence on record, in view of the law laid down by the Hon'ble Apex Court referred to above, the award passed by learned Motor Accident Claims Tribunal holding that the accident in question was caused due to rash and negligent driving of the vehicle bearing No. HR-37C-3662 by respondent No.6/Sanjay Kumar cannot be said to be suffering from any infirmity whatsoever. No other point was urged. Accordingly, I find no merit in the instant appeal and the same is dismissed. Pending application(s), if any, shall also stand disposed of.