
(2014) 04 SHI CK 0074
In the High Court Of Himachal Pradesh
Case No : FAO No. 56 of 2011

Himachal Road Transport Corporation	APPELLANT
Vs	
Deepa Chauhan and Others	RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 04 SHI CK 0074

Hon'ble Judges : Sanjay Karol, J.

Bench : Single Bench

Advocate : Varun Chandel, Advocate, for the Appellant; Neeraj Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Himachal Road Transport Corporation, a public sector undertaking has filed the instant appeal under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as the Act), assailing the award dated 30.10.2010, passed by Motor Accident Claims Tribunal Shimla, H.P., in MACC No. 36-S/2 of 2008, titled as Smt. Deepa Chauhan alias Rita vs. HRTC & another.

2. In terms of the impugned award, claimant-petitioner stands awarded compensation of Rs. 6,36,500/- alongwith interest @ 9% per annum, from the date of filing of the petition till realization.

3. Facts are not much in dispute. On 14.11.2004, petitioner was travelling in a bus bearing registration No. HP-25-0767, driven by Sh. Amar Singh, an employee of the respondent - Corporation (appellant herein). Allegedly on account of rash and negligent act and conduct on the part of the driver, the bus met with an accident. Petitioner sustained injuries and was admitted at the State Hospital. She sustained permanent injury.

4. The first question which needs to be considered is as to whether, at the time of accident, bus was being driven by the driver - respondent No. 2 in a rash and

negligent manner or not.

5. HC-Mahender Lal (PW-1) proved on record F.I.R. No. 101/2004, dated 14.11.2004 (Ext. PW-1/A) which prima facie establishes that bus was being driven by this respondent in a rash and negligent manner, which in fact was the cause of accident. Though in the proceedings arising out of said F.I.R., the driver stands acquitted, but however, it is a settled principle of law that such acquittal shall not be considered as a binding precedent or act as a res judicata for adjudication of rights and issues under the provisions of the Act. Further claimant Smt. Deepa Chauhan (PW-4) in her unrebutted testimony has clearly proved and established negligence, on the part of the driver. Significantly, defence taken by the respondent-Corporation in the claim petition, that accident occurred on account of mechanical failure of the bus, stands unsubstantiated and not proved on record.

6. The apex Court in *Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another*, has reiterated its earlier view that an award passed by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute. Compensation has to be determined after due enquiry, in accordance with the statute. Negligence on the part of driver has to be determined on the touchstone of preponderance of probabilities and not on the basis of proof beyond reasonable doubt.

7. The next question which arises for consideration is as to whether Tribunal correctly awarded compensation in the following terms:-

8. Apart from testimony of claimant (PW-4), one finds that Dr. Ravinder Mokta (PW-3), Dr. Mukand Lal (PW-6) and Dr. Manoj Thakur (PW-7) have proved the claimant's admission in the hospital for undergoing treatment and surgery. Claimant was operated upon as an indoor patient as she sustained injury of her spine in the accident. She was admitted at Indira Gandhi Medical College & Hospital, Shimla on 17.11.2004, operated on 30.11.2004 and discharged on 14.12.2004. Medical evidence (Ext. PW-7/A) is on record to this effect. After surgery, Medical Board was constituted, which opined that she had suffered 40% permanent disability in the spine. Certificate (Ext. PW-3/A) is on record to this effect.

9. Further, one finds that petitioner is not a resident of Shimla where she had to undergo treatment and as such her attendant incurred expenditure. Also petitioner engaged services of Smt. Rekha (PW-5) to whom a sum of Rs. 2500/- per month was paid for a period of one year.

10. The Tribunal rightly directed reimbursement towards the medical expenditure incurred on treatment as also expenses towards attendant, conveyance charges, boarding and lodging. All this is on actual basis, with regard to which bills are on record. As such, there is no error with the same.

11. One finds that at the time of occurrence of accident, claimant was 30 years

of age. Prior thereto she was attending to her fields apart from looking after her household affairs. For the period November, 2004 till November, 2005, she could not attend to any work. As such, Tribunal rightly awarded damages towards loss of income for a period of one year. A sum of Rs. 5000/- per month was worked out keeping in view the ratio of law laid down by the apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

12. For the purposes of awarding compensation for loss of future income and pain & suffering, Tribunal determined the loss of income to be Rs. 24,000/- p.a. and by applying multiplier of 17, a sum of Rs. 4,08,000/- stands awarded on this count, in addition to a sum of Rs. 75,000/- towards pain and suffering.

13. The amount of compensation so awarded by the Tribunal is totally in consonance with the settled principles of law. It cannot be said that multiplier of 17 is on the higher side. Also loss of income is taken to be Rs. 2000/- p.m. which in the given facts and circumstances is just, fair and equitable. All this is based on correct and complete appreciation of material on record.

14. Occurrence of accident; negligence on the part of driver, which actually was the cause of accident; factum of claimant suffering permanent injury and undertaking medical treatment stands proved on record. Defence of the appellant herein, that accident occurred on account of mechanical failure of the bus is not proved and established on record.

15. The appellant is vicariously liable to pay the amount of compensation to the petitioner on account of negligent act and conduct of its employee.

16. In my considered view, the amount of compensation so awarded in terms of impugned award cannot be said to be on the higher side. The same is within the settled parameters of law and as such does not require any interference. The award cannot be said to be perverse, illegal, erroneous or based on incomplete appreciation of the material so placed on record by the parties or contrary to settled principles of law.

For all the aforesaid reasons, there is no merit in the present appeal and the same is dismissed accordingly.

Pending application(s), if any, also stand disposed of.