
(2002) 01 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 154 of 2001

Himachal Road Transport Corporation	APPELLANT
Vs	
Inder Dass Beakta and Others	RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2002) 2 ACC 398 : (2002) ACJ 874 : (2002) 2 ShimLC 57

Hon'ble Judges : Lokeshwar Singh Panta, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : Suresh Bhardwaj, for the Appellant; B.N. Misra, for the Respondent

Judgement

Arun Kumar Goel, J.—Himachal Road Transport Corporation (hereinafter referred to as "H.R.T.C."), has preferred this appeal against the award dated 9.1.2001, passed by the Motor Accidents Claims Tribunal (2), Shimla in M.A.C. No. 94-S/2 of 1995. By means of impugned award a sum of Rs. 5,00,000 has been awarded in favour of respondent Nos. 1 and 2, with 12 per cent interest from the date of filing of the claim petition, i.e., 27.10.1995.

2. It may be noted that H.R.T.C. is the owner of bus bearing registration No. HP 07-1766, respondent Nos. 1 and 2 were the claimants before the Tribunal below being parents of deceased Jagmohan Beakta. Respondent No. 3, Surinder Beakta is the owner of Gypsy taxi No. HP 02-1348. This taxi was insured with Oriental Insurance Co. Ltd. According to respondent Nos. 1 and 2 on 6.9.1995 deceased was driving aforesaid taxi from Sanjauli to Shimla side along with passengers. Suddenly the vehicle swerved towards its right side. It was brought to a halt by the deceased but on checking it was found that there was leakage of brake oil.

3. One of the passengers, according to the respondents-claimants, was asked to go to Dhalli and get a mechanic. Meanwhile a bus of H.R.T.C. (above referred) came from opposite side which was being driven at the relevant point of time by Amar Singh (he was added as respondent in this appeal, but was ordered to be

deleted vide order dated 30.10.2001 passed by the court). This accident was caused due to rash and negligent driving on the part of the said driver as per respondent Nos. 1 and 2-claimants.

4. Further claim set-up by respondents-claimant Nos. 1 and 2 was, that deceased used to work as an orchardist and was looking after as well as maintaining both his parents. At the spot, taxi parked by the deceased could be seen from a distance of about 100 yards. Deceased was stated to have kept the "flasher lights" of the vehicle on.

5. Deceased was studying in B.A. Part-I and was working as part-time driver on monthly emoluments of Rs. 2,000 with respondent No. 3, Surinder Beakta. (It may be worthwhile to notice that he is none else, but real brother of the deceased). The deceased was earning Rs. 10,000 per month in all as per his parents-respondent Nos. 1 and 2.

6. So far stand of H.R.T.C. before the Tribunal is concerned, it pleaded that the accident in question was the result of rash and negligent driving on the part of the driver of the Gypsy. Bus in question was stopped by the driver, still deceased dashed his vehicle into the stationary bus. All other pleas urged on behalf of respondents-claimant Nos. 1 and 2 were denied for want of knowledge.

7. So far driver is concerned, he while denying the allegations made in the claim petition before the Tribunal, pleaded that deceased was not earning anything. He was also not an agriculturist, but was a student, as such had no source of income. Claim that he was maintaining his parents was denied. Similar is the reply regarding engagement of deceased with respondent No. 3 as driver. Factum of rash and negligent driving on the part of the driver was specifically denied. Rather accident was attributed to the rash and negligent driving on the part of the deceased, who drove the vehicle on wrong side of the road, although bus driver had stopped the bus on extreme left. Since deceased could not control the vehicle, he dashed it against the bus. Accident was not due to any fault on the part of the driver of the bus.

8. The respondent No. 3, owner of the taxi admitted engagement of the deceased on a monthly wages of Rs. 2,000 as a taxi driver. He pleaded that the taxi was being properly maintained. Failure of brakes suddenly developed. Accident was pleaded to be due to rash and negligent driving of the bus of H.R.T.C. by its driver. He further stated that the compensation is payable by owner and driver of the bus to respondents-claimant Nos. 1 and 2.

9. Insurance company, respondent No. 4, pleaded that the claim petition was not maintainable against it as the accident was not caused due to any negligence on the part of the driver of the vehicle/taxi. While admitting the factum of insurance of this vehicle, it was pleaded that claim, if any, was payable by the H.R.T.C., as well as its driver.

10. Respondents-claimant Nos. 1 and 2 filed replication to the replies of the

respondents and denied the averments which were contrary to what was set-up in the claim petition. The Tribunal below framed the following issues and has awarded the amount, as aforesaid, hence this appeal:

(1) Whether the accident leading to the death of Jagmohan Beakta was the result of rash and negligent driving attributed to respondent No. 2, the driver of bus No. HP 07-1766 as alleged?

OPP

(2) Whether the accident leading to the death of Jagmohan Beakta was the result of his own rashness and negligence, while driving the Gypsy No. HP 02-1348?

OPR 1 and 2

(3) Whether the petitioners are entitled to any amount of compensation, if so, to what extent and from whom?

OPP

(4) Relief.

11. In this case it may be observed that evidence of the claimants consists of the statement of PW 1 Rajinder Singh Chauhan, who claims that he was on way from Shimla to Dhalli. When he reached near St. Bede's College Chowk on 6.9.1995 in his vehicle No. DNB 7671, he found vehicle No. HP 02-1348 parked there. It was taxi. Its brakes had failed. According to this witness, deceased asked him to get a mechanic from Dhalli. At such time the flasher lights of the taxi were visible from 100 mtrs. This vehicle was facing towards Shimla and was parked on the right side of the road. Witness claims that he went to Dhalli and brought Vipin mechanic with him. He returned at about 6/6.30 p.m. when it was learnt that accident had already taken place. Taxi had been substantially damaged and its driver was removed to the Snowdon Hospital for treatment. In the evening it transpired that Jagmohan, taxi driver had died. From the spot it appears that there were skid marks of the bus up to 10/15 mtrs. He admits in the cross-examination that taxi was parked on the wrong side of the road. Besides Jagmohan, there were 3/4 more persons. The witness admits that he did not inform the police about the incident till the date his statement was recorded.

12. PW 2 is Vipin Kumar, mechanic. He stated that he was called by Rajinder Chauhan at Dhalli where he is working as mechanic. Said Rajinder Chauhan had informed him regarding failure of vehicle and defect in its brakes. Both of them reached Dhalli at about 5/5.30 p.m. They started after collecting the tools. At Nav-bahar, they came to know about the accident. There was substantial damage caused to the vehicle (Gypsy). Below it brake oil was scattered. Gypsy had met with accident with H.R.T.C. bus No. HP 07-1766. Gypsy, for whose repair he had gone, was having registration No. HP 02-1348. He admitted that accident had taken place before his arrival and he was not aware as to where the Gypsy was parked earlier. He further stated that Gypsy was struck on the wrong side.

According to him if this taxi was moving then it was from the side of the Gypsy.

13. PW 3 is Rajinder Bhardwaj. He prepared mechanical report of the vehicle Exh. PW 3-A.

14. PW 4 is Kirpa Ram who was travelling in local bus from Shimla to his residence at Sanjauli. This was in the month of september, 1995 when bus reached near Navbahar, on the right hand side of the road a taxi was seen. Bus driver applied brakes which did not work and consequently it struck against the Gypsy. Damage to a large extent was caused to Gypsy. Headlight of the Gypsy was on which was flashing and was visible from 10-15 metres. Bus was being driven at a high speed. Road is quite wide at the spot and 2-3 buses could cross simultaneously there. Witness asked the driver not to drive the bus at a fast speed, who did not say anything. Witness claims that they got down from the bus and took out the boys out of the Gypsy and by another vehicle, took them to hospital. Gypsy was easily visible from St. Bede's Chowk.

15. PW 5 is Dr. S. Sankhian, who had conducted post-mortem on the deceased on 7.9.1995.

16. PW 6 is respondent No. 1, father of the deceased. According to him date of birth of deceased was 29.10.1974, who was his son. He was employed as part-time driver and was getting Rs. 2,000 p.m. With this amount he was meeting all expenses of his education. This witness has three sons, two of whom are living separately. Deceased used to look after the entire household. Witness owned 30 bighas of land which was distributed amongst 3 sons. This entire land had orchard and deceased used to look after it. Witness would get Rs. 5/6 lakh as income and after deducting the expenses, etc., he used to save Rs. 3,00,000, whereas now the income was less than Rs. 50,000. As all trees have gone dry. Gardeners (malis) were employed by the witness, who were not managing the same properly. They would also encourage theft of the apple crop. As such they have been removed from the job. Wife of the witness was unwell for the last 10/12 years. There is no one to work at home. After the death of his son, they have nothing to eat and are surviving on loans. Because of death of their son, his wife is keeping ill-health and the witness has to remain with her.

17. He has further stated that accident was the result of the negligence on the part of the driver of H.R.T.C, who had hit the stationary vehicle. According to him his other two sons Surinder and Chander Mohan were asked to come back, but they have refused. There is no one to look after both respondent Nos. 1 and 2. His ailing wife needs money for treatment, as such just compensation may be allowed. He admits that on the day of accident he was not in the vehicle, but was at home. While admitting that deceased son was living at Shimla, the witness stated that he used to go during vacations. He also used to reside there in winters. According to witness it is correct that orchard, its ownership and land is in his name, but he has effected family partition. He was unable to bring any proof that deceased was earning Rs. 2,000 per month. He further voluntarily

stated that with this money he used to meet his expenses of education and would not demand anything from the witness. He denied the suggestion that his deceased son used to drive the vehicle and was not looking after the orchard. He further denied that on the date of accident his son had consumed alcohol and as a result of which he was driving the vehicle at a high speed or struck the Gypsy with the stationary bus of the H.R.T.C. He further denied the suggestion that there was no fault of the driver of H.R.T.C. and accident was the result of fault on the part of his son. He also denied the suggestion that his son was not earning anything or that with a view to get compensation he has made wrong statement.

18. RW 7 is the Head Constable from Dhalli, who produced true copy of F.I.R. No. 34 of 1995, Police Station, Dhalli, Exh. PW 7/A. This was a report under Sections 279/337/304-A, Indian Penal Code against the taxi driver. Final report in this case was of case being untraced.

19. Admittedly, no evidence has been produced on record either by the H.R.T.C. or by the driver. In the instant case best witness was the driver of the bus. For the reasons best known to him, he chose to keep away. At the same time, H.R.T.C. also did not care to examine him, why it is not made out from the record. Though in his reply to the claim petition, driver Amar Singh had stated that it was he who lodged the report Exh. PW 7/A. In case what he pleaded was correct, then lodging of the F.I.R. vide Exh. PW 7/A was perfectly justified on his part.

20. Oriental Insurance Co. Ltd. has proved on record Exh. RW 1/A, copy of the policy, pertaining to taxi No. HP 02-1348.

21. In the aforesaid background Mr. Suresh Bhardwaj, learned Counsel appearing for the H.R.T.C. submitted that this is a clear cut case of negligence, if any, on the part of the taxi driver and in case the impugned award is upheld, it will result in putting premium on the acts of the deceased, which can never be the intention of any provision of law including Section 166 of the Motor Vehicles Act, 1988. According to him on proved facts it is clearly made out, firstly, that it was the deceased who was responsible for the accident in question having struck against the stationary bus of his client; and secondly even if case as projected by the respondents-claimant Nos. 1 and 2 is accepted for the sake of argument, the vehicle, i.e., taxi was admittedly parked on the wrong side of the road, therefore, this is a case of contributory negligence.

22. Another plea in the alternative put up by Mr. Bhardwaj was that even if it be assumed what was pleaded by respondents-claimant Nos. 1 and 2 to be correct, still the compensation awarded is in clear violation of permissible norms in law including the decisions of the Apex Court governing the same. As according to him claimants are the parents of the deceased. And in course of time deceased was to get married and was to then look after, maintain and rear his family. Therefore, the total amount of compensation would have never been available to both the parents. In such a situation 1/3rd of the amount would be just and fair

compensation payable to the respondents-claimant Nos. 1 and 2. Therefore, he has prayed for modification of the impugned award.

23. All these pleas have been controverted by Mr. B.N. Misra, learned Counsel appearing for respondents-claimant Nos. 1 and 2. He stated that taking into account overall circumstances of this case, compensation awarded is inadequate besides being not just, therefore, it is liable to be enhanced and this Court is not precluded from exercising its powers vested in it under law.

24. Admittedly, as per father of the deceased PW 1, he had distributed his land amongst three sons in a khandani taksim (family partition). If that was so, his claim that of having earning from 10 bighas of land at Rs. 5/6 lakh per annum and after deducting expenses, the saving was about Rs. 3,00,000 appears to be highly exaggerated and inflated. In any event if partition had actually taken place as claimed by PW Inder Dass, then the land allotted to the deceased would revert back to the respondents. They had to show that what was the cost of the labour being rendered by the deceased and what is the price in terms of money for its replacement. There is no such evidence. Accepting his words that deceased used to earn Rs. 2,000 per month while working as part-time driver as correct for the sake of argument, still what the witness stated in next breath clearly shows that this amount was being spent by deceased on his education. Though there is no legal evidence, which in the facts and circumstances of the case incumbent to be established by respondents-claimant Nos. 1 and 2, but also on respondent No. 3, who is the brother of the deceased as well as owner of Gypsy taxi. Except admitting the wages of deceased being Rs. 2,000 per month, he did not lead any evidence before the Tribunal below nor did he care to appear during the course of proceedings in this appeal.

25. What was the educational profile of the deceased, there is no evidence. In cases of the present nature social strata of the family to which the deceased belonged and the living style of the family are some of the relevant factors which can be pressed into service while assessing his income that a person like deceased could earn in future. With a view to ascertain how the deceased would have come up in his future life, his educational profile would have gone a long way. Except that he was studying in B.A. Part-I about his scoring in examination as well as his merit position, there is no evidence.

26. A perusal of the amount awarded shows that the Tribunal below has taken his income at Rs. 2,000 per month and has thereafter applied multiplier of 16. After arriving at a figure of Rs. 3,84,000, he has allowed a sum of Rs. 50,000 to each of the respondents-claimant Nos. 1 and 2 on account of consortium. This brought the compensation to Rs. 4,84,000 which has been rounded off to Rs. 5,00,000 inclusive of costs of litigation.

27. So far plea of Mr. Bhardwaj that accident was due to rash and negligent driving on the part of the deceased is concerned, there is no legal evidence to that effect. After lodging the F.I.R. vide Exh. PW 7/A by the driver, it was

incumbent upon the H.R.T.C. to have produced the police file as to what happened to this F.I.R. and how it was dealt with. In addition to this it was further incumbent upon the H.R.T.C. to have examined the driver. For the reasons best known to it, there is no evidence led, as such so far as findings recorded under issue Nos. 1 and 2 by the Tribunal are concerned, those are upheld.

28. So far plea of Mr. Bhardwaj regarding the claimants being the parents of the deceased who was to get married in course of time and was to look after, maintain and rear his family is concerned, there seems to be great substance in it.

29. We are taking the income of the deceased at Rs. 2,000 per month. At the fag end of his career we presume that his income would have been Rs. 4,000 per month. Mean of both these sums works out to Rs. 3,000 per month or say Rs. 36,000 per annum. Looking to the age of the deceased, multiplier of 18, in our opinion, needs to be applied in this case. Thus, total compensation works out to Rs. 6,48,000. By adding a sum of Rs. 10,000 on account of loss to the estate and a further sum of Rs. 10,000 towards conventional damages, besides Rs. 4,000 as funeral expenses, total compensation works out to Rs. 6,72,000.

30. Being the parents, the respondents-claimant Nos. 1 and 2 are entitled to only 1/3rd of this compensation which comes to Rs. 2,24,000 to be shared equally by both of them. This amount is inclusive of any sum paid/deposited u/s 140 of the Motor Vehicles Act. In addition to this, respondents would also be entitled to 12 per cent interest on this amount from the date of filing of the claim petition, i.e., 30.10.95 till the date of payment/deposit.

31. For taking the above view, we have taken support from a recent decision of the Hon'ble Supreme Court of India in Donat Louis Machado and Others Vs. L. Ravindra and Others, What was held in this judgment and is relevant for the present case is extracted hereinbelow:

(3) We have heard learned Counsel for the appellants-claimants as well as the learned Counsel for the insurance company, who is the real contesting party at this stage and who has to bear the burden of the total amount of compensation made payable to the claimants. We may note certain salient features of the case which are not in dispute. The deceased was earning Rs. 2,500 per month in his vocation as a journalist at the relevant time. He was aged 31 years when his life was cut short because of the unfortunate accident. Learned counsel for the claimants contended that he was also earning extra income, but as there is no clear evidence, we will proceed on the basis that he was earning Rs. 2,500 per month at least. As he died at a comparatively young age of 31 years, he had a very lucrative career before him for a number of years had he survived. Therefore, we can easily visualise that his total earnings would have gone up by at least Rs. 5,000 per month by the time he would have rested on his oars and given up his work as a journalist after exhausting his full earning career.

Consequently, the total amount would work out at Rs. 7,500 per month during the whole span of future career and taking an average at 50 per cent, his future monthly income during the rest of the life could have worked out at Rs. 3,750. On that basis, 12 months' earning would have been Rs. 45,000 and adopting a multiplier of 15 looking to the young age of the deceased the total economical gain to his estate would work out at Rs. 6,75,000 at least. But taking a conservative figure of Rs. 6,00,000 it can easily be visualised that the claimants who are the parents and the unmarried sister and who are dependent on him would have got at least 1/3rd amount as he would have spent the rest of 2/3rd amount of his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs. 2,00,000. This can easily be treated to be the appropriate compensation payable to the claimants on account of economical loss suffered by them as a result of the unfortunate accident to their breadwinner. The High Court has granted the compensation of Rs. 1,27,000 so that the remaining amount which can be assessed as payable by the respondents would be Rs. 73,000 more.

(4) We, therefore, allow this appeal partly by directing the respondents to pay an additional amount of Rs. 73,000 jointly and severally along with 9 per cent interest on the additional amount of Rs. 73,000 from the date of filing the claim petition till payment of this additional amount. Respondent No. 3 insurance company will, therefore, have to pay the additional amount of Rs. 73,000 with 9 per cent interest as aforesaid to the claimants. This amount shall be deposited in the Tribunal by respondent No. 3 insurance company towards the full and final satisfaction of the appellants' claim within a period of eight weeks from today. The appellants will be entitled to withdraw the same from the Tribunal on giving due identification of the claimants concerned. There shall be no order as to costs in the facts and circumstances of the case.

32. On the other hand, Mr. Misra, learned Counsel appearing for the respondents-claimant Nos. 1 and 2 by placing reliance on a recent, decision of the Hon'ble Apex Court of India in M.S. Grewal and Another Vs. Deep Chand Sood and Others, urged that compensation assessed by the Tribunal below needs to be upheld. According to him in the case before the Supreme Court, compensation of Rs. 5,00,000 per student assessed by this Court in the case of students who drowned while on a picnic, was upheld by the Supreme Court. That case has no bearing so far assessment of compensation passed on the evidence as in the present case is concerned. In addition to this we may also point out that in the facts and circumstances of the case before the Apex Court what was observed and makes the present case distinguishable on facts was as under:

(36) Having considered the matter in its proper perspective and the applicability of multiplier method and without even any further material on record, we do feel it expedient to note that though Mr. Bahuguna attributed the quantum granted by the High Court as strangely absurd, we, however, are not in a position to lend our concurrence therewith. It is not that the award of compensation at Rs.

5,00,000 can be attributed to be the resultant effect of either emotions or sentiments or the High Court's anguish over the incident. The High Court obviously considered the overall situation as regards social placements of the students. As stated hereinafter the School presently is one of the affluent schools in the country and fee structure and other incidentals are so high that it would be a wellnigh impossibility to think of admission in the school at even the upper middle class level. Obviously, the school caters to the need of the upper strata of the society and if the Second Schedule to Motor Vehicles Act can be termed to be any guide, the compensation could have been a much larger sum. Thus in the factual situation, award of compensation at Rs. 5,00,000 cannot by any stretch be termed to be excessive. Another redeeming feature of Mr. Bahuguna's submissions pertains to the theory of ability to pay: Audited accounts have been produced for the year 1995 depicting a situation, though not of having stringency but the situation truly cannot but be ascribed to be otherwise comfortable to pay as directed by the High Court. The matter, however, was prolonged in the law courts in the usual manner and it took nearly six years for its final disposal before this Court - these six years, however, had rendered the financial stability of the school concerned in a much more stronger situation than what it was in the year 1995. The school as of date stands out to be one of the most affluent schools in the country, as such ability to pay cannot be termed to be an issue in the matter and on the wake thereto we are not inclined to deal with the same in any further detail.

As such this decision in no way advances the case of respondents-claimant Nos. 1 and 2. We may observe in this behalf that even by applying the provisions of Order 41, CPC (in the absence of either a cross-appeal or cross-objection), still the amount awarded cannot be upheld as ordered by the learned Tribunal below. So far as multiplier of 18 is concerned, that is the maximum that could be applied keeping in view the age of the deceased, as well as in the face of the decision of the Supreme Court in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*,

33. Mr. Misra referred to another decision in *Tasnimtaj and Others Vs. Managing Director, KSRTC and Another*, and urged that the compensation awarded by the Tribunal if cannot be enhanced at least should be upheld. After having given our thoughtful consideration to this decision we find that in the face of subsequent decision in *Donat Louis Machado and Others Vs. L. Ravindra and Others*, plea of Mr. Misra to uphold the amount awarded cannot be accepted.

34. Reliance placed on *Urmilla Pandey and others Vs. Khalil Ahmad and others*, by Mr. Misra is of no consequence. Reason being that it was a case of a widow and two minor children of the deceased where the Supreme Court had assessed the compensation.

35. In case of *Adikanda Sethi (Dead) through Lrs. and Another Vs. Palani Swami Saran Transports and Another*, compensation of Rs. 1,00,000 was claimed on account of the estate of the deceased and support to the appellant as dependant

of the deceased was claimed. Tribunal allowed this compensation. High Court while confirming the award, had enhanced it by another Rs. 18,000. Supreme Court after placing reliance on U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, enhanced the compensation from Rs. 1,00,000 to Rs. 1,40,000, but because only Rs. 1,00,000 was claimed, therefore, it was restricted to this sum with interest at the rate of 6 per cent from the date of judgment of the High Court, i.e., 13.9.1993. Again this case has no bearing, so far present case is concerned.

36. No other point is urged.

37. On an overall examination of the materials on record and by applying the law governing the same, we are satisfied that respondents-claimant Nos. 1 and 2 are only entitled to a total sum of Rs. 2,24,000 which is inclusive of any amount paid/deposited u/s 140 of the Motor Vehicles Act, besides interest at the rate of 12 per cent per annum on this amount from the date of filing of the claim petition, i.e., 27.10.95 till the date of payment/deposit. Accordingly, this appeal is partly allowed. Consequently, the amount awarded to the aforesaid extent is reduced with no order as to costs. From part B of the file we find that the entire awarded amount has been deposited by the H.R.T.C. in the Registry of this Court . It is ordered that after retaining the amount payable to respondent Nos. 1 and 2, as aforesaid, minus any amount released to them either under the orders of this Court or under no fault liability, balance amount with accrued interest shall be refunded to it by remitting the same in the bank account of the H.R.T.C. Account number to be furnished within 4 weeks. No costs.