
(2014) 09 SHI CK 0135
In the High Court Of Himachal Pradesh
Case No : FAO No. 369 of 2012

Himachal Road Transport Corporation	APPELLANT
Vs	
Parveen Kumari	RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 1 ShimLC 10

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

Bench : Single Bench

Advocate : Vikrant Thakur, Advocate for the Appellant; Rajesh Mandhotra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—Appellant-Himachal Road Transport Corporation has thrown challenge to the award, dated 7th March, 2012, passed by Motor Accident Claims Tribunal-III, Kangra, Himachal Pradesh, (hereinafter referred to as the Tribunal), whereby Claim Petition No. 158-D/09/2010, titled as Parveen Kumari and Anr. Vs. Himachal Road Transport Corporation and Anr., came to be determined by awarding compensation to the tune of Rs. 24,58,032/-, with interest at the rate of 7.5% per annum from the date of filing of the Claim Petition till its realization, in favour of the claimants (respondents No. 1 and 2 herein) and the appellant/owner was saddled with the liability, (for short, the impugned award).

2. Facts of the case, in brief, are that claimants, being the unfortunate widow and daughter of deceased Jagdeep Malhotra, who became victim of a vehicular accident, caused by Kuldeep Chand, driver, while driving the offending HRTC bus bearing registration No. HP-53-2642, rashly and negligently from Mandi to Pathankot, have filed the claim petition for grant of compensation, as per the break-ups given in the claim petition. The offending bus hit the motor cycle bearing No. HP-39B-01111, at Shahpur, on which the deceased was traveling, who

sustained injuries and succumbed to the same. FIR No. 51/2009 was registered at Police Station, Shahpur. It was averred that the deceased was serving as Lance Head Constable in Himachal Pradesh Police and was earning Rs. 16,478/- per month as salary.

3. Respondents resisted the Claim Petition by filing separate replies.

4. On the pleadings of the parties, the following issues were framed by the Tribunal:

1. Whether the deceased Jagdeep has died in an accident with the offending vehicle bus bearing registration No. HP-53-2642 as a result of rash and negligent driving by respondent No. 2 driver of the offending vehicle on 12-4-2009 at Shahpur, Distt. Kangra, H.P. and thereby the petitioners being dependent of the deceased are entitled for compensation, if so the extent, and liability thereof, as alleged? OPP.

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

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

4. Whether the petitioners are estopped by their own act, conduct and acquiescence to file the present petition, as alleged? OPR

5. Relief.

5. The claimants have examined five witnesses in all, in support of their claim, while respondents examined three witnesses, including the driver of the offending vehicle who stepped into the witness box as RW-1.

6. The Tribunal, after scanning the pleadings and the evidence, held that the driver Kuldeep Chand had driven the offending bus rashly and negligently. I have examined the record. There is ample evidence on the file to the effect that the driver, namely, Kuldeep Chand, had driven the offending Bus rashly and negligently and hit the motor cycle on which the deceased was traveling, as a result of which, the deceased sustained injuries and succumbed to the same. Thus, the findings returned by the Tribunal on issue No. 1 are upheld.

7. It was for the appellant and the driver to prove how the Claim Petition was not maintainable, failed to do so. Admittedly, the claimants, being the victims of vehicular accident, filed the Claim Petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), and therefore, the same was maintainable. Thus, issue No. 2 was rightly decided by the Tribunal.

8. The Driver or the owner had to plead and prove that the petition was hit by non-joinder of parties. I wonder why issue No. 3 was framed. However, the driver and the owner have not led any evidence to prove this issue. Thus, the findings recorded by the Tribunal on issue No. 3 are also upheld.

9. The owner and the driver have pleaded that the claimants are caught by law

of estoppel, act, conduct and acquiescence. It is not known how such a plea was taken. However, there is no evidence on the file to the effect that how the victims of a vehicular accident can be restrained from claiming compensation under the Act, which is a social legislation and under which, compensation is to be granted without succumbing to the niceties of law and procedural wrangles and tangles. Having said so, issue No. 4 came to be rightly decided by the Tribunal.

10. Claimants have examined HHC Rakesh Kumar as PW-2 to prove the salary certificate of the deceased. The Tribunal, after examining the evidence led by the claimants, held that the deceased was earning Rs. 16,470/-. The Tribunal also allowed 30% addition by way of future prospects, and after making deductions, keeping in view the dictum of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which decision was also upheld by the larger Bench of the Apex Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , held that the claimants have lost source of dependency to the tune of Rs. 14,274/- per month.

11. The deceased, as per the record and pleadings i.e. paragraph 3 of the Claim Petition, was 40 years of age at the time of the accident and the Tribunal has rightly taken his age as 40 years and has applied multiplier "14", which is just and appropriate in view of Schedule 2 appended with the Act, read with the judgments (supra). The Tribunal has also rightly awarded Rs. 10,000/- and Rs. 50,000/- under the heads funeral charges and loss of love and affection, respectively, cannot be said to be excessive in any way.

12. Having said so, the appeal merits to be dismissed and the same is dismissed accordingly. Consequently, the impugned award is upheld. The Registry is directed to release the award amount in favour of the claimants strictly in terms of the impugned award.