

(2003) 08 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : F.A.O. No's. 168 and 198 of 2001

H.R.T.C.

APPELLANT

Vs

Inder Singh Saraik (since deceased) and Others
 Inder
Singh Saraik (since deceased) and Others Vs H.R.T.C.

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2003) 3 ShimLC 321

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Ashok Sharma, in F.A.O. No. 198 of 2001 and D.N. Ronta, in F.A.O. Nos. 168 of 2001, for the Appellant; D.N. Ronta in F.A.O. Nos. 198 of 2001 and Ashok Sharma in F.A.O. Nos. 168 of 2001, for the Respondent

Judgement

Arun Kumar Goel, J.—Admitted facts of this case are that Bus Bearing Registration No. HIS-1721 met with an accident at a place known as Baghar Kainchi when it was on way from Kiari via Kotkhai to Shimla. Besides other, Chander Mohan, aged 35 years was one of the passengers. He had boarded the bus in Koti Bani for coming to Kotkhai. As a result of this accident, he died at the spot. Though he was brought to Community Health Centre at Kotkhai, but nothing could be done.

2. Inder Singh Saraik is his father. He died during the pendency of these appeals before this Court. By separate order of the day passed in both these appeals, at the request of learned Counsel, his name was ordered to be deleted from the array of parties. Claimants No. 2 to 5, according to the learned Counsel for parties, could represent the estate of the deceased so far these appeals are concerned.

3. In the aforesaid background of admitted facts, claim petition was filed u/s 166 of the Motor Accident Vehicles Act, 1988 (hereinafter referred to as "the Act"), by Inder Singh Saraik, Savitri Devi being parents, Smt. Sudershana Devi widow,

Sumeet and Amit minor sons, of the deceased, (hereinafter referred to as "the claimants"). According to them, accident was the result of rash and negligent driving of the driver Bhag Mal of the ill-fated bus. They claimed compensation to the tune of Rs. 15,00,000/-.

4. Himachal Road Transport Corporation, (hereinafter referred to as "the HRTC"), when put to notice, contested and resisted the claim of the claimants. According to it, petition was bad for non-joinder of necessary parties. Who were such parties, nothing is said in the reply. A sum of Rs. 10,000/- having been paid as relief at the time of accident at the spot was deliberately withheld by the claimants, was set up as defence in this case. Factum of accident was admitted, but being the result of rash and negligent driving was denied.

5. In the aforesaid background, learned Tribunal below awarded Rs. 3,33,000/- inclusive of any amount paid under no fault liability, in addition to 12% interest per annum on this sum from the date of filing petition, i.e. 9.12.1999.

6. It is against this award that claimants have asked for its further enhancement as the amount awarded is inadequate. Whereas HRTC has filed the appeal for reduction of compensation as it was excessive and exorbitant.

7. Since both these appeals have arisen out of the same award, therefore, they are being heard together and are being disposed of by this common judgment.

8. So far payment of compensation in case of a motor vehicle accident is concerned, law requires the Tribunal to assess just compensation. It has neither to be too excessive, nor to be ridiculously low. It also does not come as a bounty on account of death of a person, like Chander Mohan in the present case. Thus while assessing compensation, some guess work is always involved, unless there is evidence with mathematical precision regarding the income as well as age of the deceased.

9. With a view to properly appreciate the respective submissions urged on behalf of the parties at the time of hearing of the appeals, evidence produced by them needs to be briefly referred to.

10. Inder Singh (since deceased), appeared as PW-1. According to him, his son Chander Mohan was 35 years of age. He was a construction contractor and was also looking after the entire family, orchard and land. Monthly income of the deceased was Rs. 10,000/-. Witness being an old man of 75 years was unable to work in the orchard and land. Mother of the deceased was 60 years of age. Widow of the deceased was 30 years of age, whereas two sons were 15 and 8 years old respectively. All of them were dependant on the deceased. He has placed on record Ext. P-4, copy of registration certificate of the deceased as a "D" Class, PWD Contractor as also the entries from the Panchayat record being Ext. P-1 to P-3. Per this witness, he was not able to derive any income from the land and orchard as he was totally dependant on his deceased son. He had one son, and two daughters who are married. In his cross-examination, he admitted

the receipt of Rs. 10,000/- after the death of his son. PW-2 is Paresh Chauhan junior Engineer, H.P.P.W.D. Kotkhai. According to them, he was working as Junior Engineer in Kotkhai Sub Division of H.P. Public Works Department. Deceased Chander Mohan was "D" Class Public Works Department Contractor and had been awarded contracts. According to him, during the year 1998-99, a contract of Rs. 2,32,467/- had been awarded to Chander Mohan. PW-3 is Rajinder Dewanta, Manager of H.P. M.C. at Gumma. Deceased had undertaken the job of lifting culled fruit and was paid Rs. 43,507/- in the year 1998. PW-4 is Rajinder Singh, a co-passenger in the ill-fated bus on the fateful day when it met with the accident. Per him, there was land slide from the hill side and at the site of accident, road was narrow. However, driver did not slow down the bus while crossing the road. This resulted in rolling down of the bus. Chander Mohan was in the bus and he died in the accident. PW-5 is Prem Singh co-villager of the deceased. He has supported the case of the father of the deceased and has added that the deceased used to sell apples worth Rs. 1,00,000/- per year. Income of the father of the deceased was adversely affected on account of death of Chander Mohan.

11. On the other hand, driver of the bus Bhag Mai appeared as RW-1. He admitted the fact of accident, but attributed it due to sagging of road which resulted in rolling down of the bus. He, however, denied that there was a big boulder on the road and because of it there being no space for the bus to cross.

12. When a reference is made to the reply of HRTC while contesting and resisting the claim petition before the Tribunal below, no defence of sagging of the road and consequently the bus having rolled down was ever raised. Shri Ashok Sharma, learned Counsel appearing for HRTC attempted to submit, that strict rigours law of pleadings do not apply to the proceedings under Motor Vehicles Act. As such this Court may not take serious view of this omission on the part of his client. In this behalf, suffice to say that bare minimum requirement on the part of his client so as to enable the Tribunal to assess just compensation, always required the facts to be pleaded on the factual side by the HRTC, particularly when a vital fact could change the whole complexion of the entire case regarding liability of the HRTC. On the other hand, even if, strict rigours of the law of pleadings, are not applicable to proceedings under the Act, still the fact remains that adequate, enough facts are required to be clearly set up in the pleadings. Last but not the least, general principles of the CPC can always be looked into for ascertaining whether the pleadings so far facts are concerned, are there or not. Applying these tests to the reply filed by the HRTC to the claim petition, plea urged by Mr. Sharma has been raised, simply to be rejected and it is ordered accordingly.

13. What follows from this is that, the case set up in its reply by the HRTC was different from that was intended to be proved from the statement of RW-1, driver of the ill-fated bus. In addition to this, when a reference is made to the statement of PW-4, Rajinder Singh who was travelling in the ill-fated bus at the

time of accident, there is no suggestion of sagging of the road given to him in his cross-examination. This omission, coupled with pleadings of the fact of sagging of the road in the reply filed to the claim petition, clearly suggests, that this plea is nothing but is an afterthought coined by the HRTC to defeat the claim of the claimants.

14. Now coming to the plea of the parties that compensation is excessive, inadequate and not just, which the Tribunal is bound to assess. Suffice it to say that looking to the age of the deceased and the fact that he was a "D" Class PWD Contractor, besides having income from the orchard as well as the land, no exception can be taken to the gross income of the deceased being Rs. 38,500/- per annum after deducting 12,000/- for his personal expenses, i.e. Rs. 26,500/-. Statement of PW-1 father of the deceased and his co-villager PW-5 Prem Singh, regarding the deceased looking after the orchard and land and thereafter there being no income as well as its having been adversely affected, has remained uncontroverted. Orchard as well as the land being available to the claimants, only cost of replacing the labour being put in by the deceased has to be worked out so as to enable them to earn income out of the orchard and land. But there is no such evidence.

15. Learned counsel for the claimants submitted that keeping in view the age of the deceased, multiplier of 12 applied by the Tribunal below is on extremely lower side. He placed reliance on the decision of the Supreme Court, in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, According to him, if not of 20, at least, multiplier of 18 needs to be allowed, looking to the age of the deceased and longevity in the family as his father was 75 years of age, mother being 60 years and widow being 30 years on 5.8.2000.

16. In this decision, a three Judges' Bench of the Supreme Court, after going into the question of multiplier held as under:-

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs. 3,000. The total should be $3000 \times 15 = 45,000$ but the same is worked out at Rs. 60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9,000; the total should have been Rs. 1,44,000/- but is shown to be Rs. 1,71,000. To put in briefly, the table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of the multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that

ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as courts and tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of awareness of the background of the multiplier system in Davies case.

17. Mr. Sharma, learned Counsel appearing for HRTC controverted this plea of the claimants and urged that they have already been over-paid and the appeal of the claimants needs to be dismissed.

18. Looking to the age of the deceased, as also keeping in view the fact that multiplier method by now is an accepted mode of working out the just compensation in motor accident claims by all the High Courts as well as the Supreme Court, it is felt that the multiplier of 12 needs to be altered to 17. Ordered accordingly. In addition to this, claimant Sudershana Devi as widow of the deceased, in my view, is entitled to a sum of Rs. 10,000/- on account of consortium, because of death of her husband.

19. No other point is urged.

20. In view of the aforesaid discussion, while dismissing FAO No. 198 of 2001, HRTC v. Index Singh Saraik and Ors.; FAO No. 168 of 2001, Index Singh Saraik and Ors. v. HRTC, is partly allowed in the following terms :-

(a) The claimants are in all entitled to a sum Rs. 4,75,500/- (Rs. 26,500 x 12 x 17 = 4,50,500 + 10,000+15,000/-). This amount is inclusive of any amount paid/deposited by HRTC under no fault liability;

(b) The aforesaid compensation shall carry interest at the rate of 12% per annum from the date of filing claim petition i.e. 9.12.1999;

(c) The aforesaid amount will be apportioned amongst the claimants as under :

Savitri Devi, mother	Rs. 45,500/-	Inder Singh, father (since deceased)	Rs. 24,000/-	Sudershana Devi, Widow	Rs. 1,42,000/-	Minor Son Sumeet	Rs. 1,32,000/-
		Minor Son	Amit	Rs.			1,32,000/-

Total	Rs.	4,75,500/-
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(d) Since father of the deceased has died during the pendency of these appeals, the amount payable to him (Inder Singh Saraik) will be equally shared by the claimants, i.e. Savitri Devi, Sudershana Devi, Master Sumeet and Master Amit, besides two married daughters;

(e) Claimants will also be entitled to proportionate interest on the amount as apportioned amongst them in (a) to (c) above;

(f) So far amount payable to minors is concerned, it will remain invested in Fixed Deposit till they attain majority;

(g) Any amount deposited/paid/released in terms of the award of the Tribunal shall be adjusted towards the shares of such claimants; and

(h) Parties to bear their own costs.

21. All interim orders passed in these appeals from time to time shall stand vacated forthwith and all pending applications are disposed of. Liberty is, however, reserved to claimants to apply for refund, if so advised.