

(2016) 11 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No. 171 of 2012 and FAO No. 397 of 2012

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Satya Devi

RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 173

Citation : (2017) AAC 210 : (2017) 1 HimLR 123

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Suneet Goel, Advocate, for the Respondents No. 1 to 3 in FAO No. 171 of 2012; Mr. Lovneesh Kanwar, Advocate, for the Respondent No. 4 in FAO No. 171 of 2012; Mr. Suneet Goel Advocate, for the Appellant in FAO No. 397 of 2012; Mr. Jagdish Thakur, Advoc

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J. - Both these appeals are outcome of judgment and award dated 15.2.2012, made by the Motor Accident Claims Tribunal Hamirpur, H.P., for short "the Tribunal", in MAC Petition No. 07 of 2010, titled Satya Devi and others v. Shri Parkash Chand and another, whereby compensation to the tune of Rs. 19,90,000/- along with interest @ 7.5% came to be awarded in favour of the claimants and insurer was saddled with the liability, hereinafter referred to as "the impugned award", for short.

2. Feeling aggrieved, the claimants have questioned the impugned award by the medium of FAO No. 397 of 2012, on the ground of adequacy of compensation and the insurer has questioned the same by the medium of FAO No. 171 of 2012, on the grounds that the Tribunal has fallen in an error in saddling it with the liability and the amount awarded is excessive.

3. The owner-cum-driver has not questioned the impugned award on any ground. Thus, the same has attained the finality so far as it relates to him.

4. Both these appeals arise out of a common award thus; I deem it proper to determine both these appeals by this common judgment.

5. The claimants being the victims of a vehicular accident, filed claim petition before the Tribunal, for the grant of compensation to the tune of Rs. 25,00,000/- as per the break-ups given in the claim petition on account of death of Shri Piar Chand who died in a motor vehicle accident on 3.1.2010. He was teacher by profession. He had gone to Ramehra along with Azad Singh and others to purchase household articles. It is averred that when they reached at place Simalka-Rihra, a Santro car bearing Registration No. HP-22-B-6667, being driven by respondent No. 1 Parkash Chand, came from the side of Ramehra in a very high speed due to which the driver could not control it, hit the deceased, who was on extreme left side of the road, as a result of which he fell down on the road, sustained the injuries and succumbed to the same. FIR under Sections 279, 337 and 304-A of IPC was registered against driver Parkash Chand in police Station Bhoranj, District Hamirpur, H.P.

6. The claim petition was resisted by the respondents by filing the replies and following issues came to be framed by the Tribunal.

1. Whether the death of Piar Chand was caused due to use/rash and negligent driving of Santro Car No. HP-22B-6667 by respondent No. 1 as alleged ? OPP

2. If Issue No. 1 is proved in affirmative, whether the petitioners/claimants are entitled to compensation, if so, to what amount and from which of the respondents ? OPP

3. Whether the petition is not maintainable as alleged ? OPRs.

4. Whether the respondent No. 1 was not holding a valid and effective driving licence to drive the vehicle in question at the relevant time, if so, its effect ? OPR-2.

5. Relief.

7. Claimants examined five witnesses, namely Jaswant Singh as PW1, Arun Katna as PW2, Uttam Singh as PW3, Ramesh Kumar as PW4 and Satya Devi claimant No. 1 herself stepped into the witnessbox as PW5.

8. Respondents have examined three witnesses, namely, Vijay Kumar as RW2, Criminal Ahlmad of the Court of Judicial Magistrate 1st Class Court No. II Hamirpur as RW3 and respondent No. 1 Parkash Chand stepped into the witness-box as RW1.

9. The Tribunal, after scanning the evidence held that the driver had driven the offending vehicle rashly and negligently and caused the accident, in which Piar Chand sustained the injuries and succumbed to the same. The driver and insurer have not questioned the said findings. Thus, the same have attained the finality so far as the same relate to them. However, I have gone through the record. Claimants have proved that the driver had driven the offending vehicle rashly

and negligently and caused the accident in which Piar Chand lost his life. Thus, the findings returned by the Tribunal on issue No. 1 are upheld.

10. Before I determine issue No. 2, I deem it proper to determine issues No. 3 and 4.

Issue No. 3.

11. The Tribunal has rightly decided issue No. 3 and the findings returned on this issue are not questioned by the insurer, are accordingly upheld.

Issue No. 4.

12. It was for the insurer to prove that the driver was not having a valid and effective driving licence, has failed to prove the said fact. The Tribunal has rightly decided this issue in favour of owner-cum-driver and against the insurer. The insurer, in fact, has not questioned the said findings. However, I have gone through the driving licence which does disclose that the driver was having a valid licence. Accordingly, findings returned on this issue are also upheld.

13. During the course of hearing on 21.10.2016, learned counsel for the appellant in FAO No. 171 of 2012 was asked to seek instructions to settle the claim by paying Rs. 15,52,000/- with 7.5% interest from the date of filing the claim petition till its realization. He sought instructions and stated at the Bar that award be made accordingly. His statement was taken on record. Learned counsel for respondents/claimants No. 1 to 3 sought time to seek instructions and case was posted for 28.10.2016. It is apt to reproduce order dated 21.10.2016 herein. "Learned counsel for the appellant in FAO No. 171 of 2012 was asked to seek instructions to satisfy the award in a lump sum of Rs. 15,52,000/- with 7.5% interest from the date of filing the claim petition till its realization. He stated that the award be made accordingly. Mr. Suneet Goel, learned counsel for respondents No. 1 to 3, sought time to seek instructions. Granted. List on 28th October, 2016."

14. On 28th October, 2016 Mr. Suneet Goel, learned counsel for the appellant in FAO No. 397 of 2012, stated that he has sought instructions and his clients were not ready to settle the claim. It is also apt to reproduce order dated 28th October, 2016 herein.

"Learned counsel for the appellant in FAO No. 397 of 2012 stated that he has sought instructions but his client is not ready to settle the claim in a lump sum of Rs. 15,52,000/- as recorded in order dated 21.10.2016, as agreed by the insurer in FAO No. 171 of 2012. His statement is taken on record."

15. Thus, the only dispute involved in these appeals is-whether the amount awarded is adequate or otherwise.

16. The entire controversy revolves around Issue No. 2. The deceased was a government employee and was drawing gross salary to the tune of Rs. 37,279/- per month as per the LPC Ext. PW3/A, was 57 years of age at the time of the

accident and had to retire at the age of 58 years. Keeping in view of the 2nd Schedule attached to the Motor Vehicles Act, 1988 for short "the Act", read with *Sarla Verma and others v. Delhi Transport Corporation* and another reported in AIR 2009 SC 3104 and upheld in *Reshma Kumari and others v. Madan Mohan* and another, reported in 2013 AIR SCW 3120. 3rd was to be deducted towards his personal expenses. Thus, the source of dependency lost by the claimants comes to Rs. 25,000/-, per month till the age of retirement, i.e., for one year only.

17. The compensation under the head "loss of income" is to be assessed while keeping in view the fact that the deceased had to retire within one year and thereafter he would have been receiving pension and may be also doing some part time job.

18. In support of the aforesaid observations, reliance is placed on the judgment delivered by the Kerala High Court in case titled *T.T. Narayanan and another v. Mrs. P. Bridget and others* reported in II (1991) ACC 120 (DB). It is apt to reproduce para 3 of the said judgment herein.

"3. On the date of the occurrence and death deceased had 46 months more service left as headmaster. He was in a pensionable job and he would have drawn pension for fifteen years, namely, till he attains 70 years. The Tribunal computed pay and allowances due for 46 months and the pension due for 15 years and deducted 20% for personal expenses of the deceased and 10% for uncertainties of life and thus arrived at the compensation payable to the claimants. The only submission urged by learned Counsel for the appellants in this regard is that on account of premature death of U. Vincent, the amount of family pension for the period of 15 years has to be deducted from the amount awarded. This submission appears to be correct. Family would be entitled to maximum family pension of Rs. 150/- per month. Computing this for 15 years and deducting 30% the amount of family pension would be Rs. 18,900/-. This amount has to be deducted from Rs. 1,28,688/- awarded by the Tribunal. The correct quantum payable therefore would be Rs. 1,09,788/-."

19. In view of the *Sarla Verma's* case *supra*, multiplier applicable is "7" and is applied accordingly.

20. It is worthwhile to record herein, at the cost of repetition that the deceased had to retire within one year and thereafter had to get pension. The Tribunal has fallen in an error in assessing the compensation. The assessment was to be made while keeping in view the gross salary of the deceased till the age of retirement, thereafter, pension payable and other income which he would have earned.

21. The multiplier "1" was applicable for assessing loss of dependency/income under the head "gross salary" and multiplier "6" was applicable, i.e., (after deducting multiplier "1" out of multiplier "7") for assessing loss of dependency/income under the head "pension and other income."

22. The claimants have lost source of dependency and are entitled to compensation to the tune of Rs. 25,000/- x12x1 = Rs.3,00,000/-, under the head loss of income for one year as the deceased had to retire within one year from the date of accident.

23. The deceased would have been receiving pension to the tune of 50% of the basic pay plus dearness allowance which comes to Rs. 18,500/- per month roughly. 7rd was to be deducted keeping in view the 2nd Schedule of the Act read with Sarla Verma's case supra, the source of dependency comes to Rs. 12500/-. Thus, it can be safely held that the claimants have lost source of dependency to the tune of Rs. 12500/-x12x6= Rs. 9,00,000/-.

24. The deceased would have worked for some period after retirement and would have been earning not less than Rs. 6500/- per month by getting part time job and from other vocations. 7rd was to be deducted in view of the law referred to supra. Thus, it can be safely held that the claimants have also lost source of income roughly to the tune of Rs. 4500x12x6= Rs. 3,24,000/-.

25. In addition, the claimants are also held entitled to compensation under the four head as follows.

(i)

Loss of love and affection

:

Rs.10,000/-

(ii)

Loss of estate

:

Rs.10,000/-

(iii)

Funeral expenses

:

Rs.10,000/-

(iv)

Loss of consortium

:

Rs.10,000/-

Total

Rs.40,000/-

26. Thus, in all, the claimants are entitled to compensation to the tune of Rs. 3,00,000/- + Rs. 9,00,000 + Rs. 3,24,000/- + Rs. 40,000/- = Rs. 15,64,000/-, with interest at the rate of 7.5% as awarded by the Tribunal.

27. Accordingly, the appeal being FAO No. 171 of 2012, filed by the insurer is allowed, the impugned award is modified as indicated herein above and the appeal being FAO No. 397 of 2012 filed by the claimants for enhancement is dismissed.

28. Registry is directed to release the amount in favour of the claimants, strictly, in terms of the conditions contained in the impugned award, through payees' cheque account or by depositing the same in their bank accounts and excess amount be released in favour of the insurer along with interest, through payees' cheque account, after proper verification.

29. Send down the record forthwith, after placing a copy of this judgment.