(2016) 05 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : FAO No. 129 of 2010

ICICI Lombard General Insurance Company Ltd. APPELLANT

Vs

Shri Dike Ram & another RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2016) AAC 2212 : (2016) LatestHLJ(HP) 811

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

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Appellant; Ms. Leena Guleria, Advocate. in FAOs No. 129, 130 & 131 of 2010, Mr. Naveen Kumar Bhardwaj, Advocate. in FAO No. 132 of 2010, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral) - These four appeals are directed against the common award dated 11th January, 2010, passed by the Motor Accident Claims Tribunal, (I), Mandi, H.P. (hereinafter referred to as ''the Tribunal''), whereby four claim petitions came to be determined and compensation, details of which are given in para 53 of the award (hereinafter referred to as ''the impugned award''), with interest @ 7.5% per annum from the dates of filing of the claim petitions, was granted in favour of the claimants and the insurer was saddled with liability.

2. The claimants and insured-owner have not questioned the impugned award on any count, thus has attained finality, so for it relates to them.

3. Only, the insurer has questioned the impugned award on the grounds that the driver was not having a valid and effective driving licence at the time of accident, rather, he was possessing a forged driving licence and the Tribunal has fallen in an error in saddling it with the liability.

4. The only question to be determined in these appeals is that - whether the finding recorded by the Tribunal on issue No. 4 are legally correct? It is apt to

record issue No. 4 herein:

"4. Whether the driver of vehicle No. HP-01-K-1185 was not holding valid and effective driving licence to drive the taxi aforesaid? In the given circumstances, I deem it proper to club and determine all these appeals by this common judgment."

5. The copy of driving licence Ext. RW-1/A is on the file of Claim Petition No.117 of 2007, which is shown to have been issued in favour of driver Krishan Singh. The Tribunal after making discussion in paras 50 to 52 of the impugned award held that the driver was having a valid and effective driving licence at the relevant time.

6. Respondent No. 2, i.e. insured-appellant has examined Clerk of the Licensing Authority, Regional Transport Authority, Dehradun, namely, Mukata Kanoja, who has deposed that the licence No. K-7193 was issued in favour of Karam Singh, S/o Betal Singh and not in favour of Krishan Singh.

7. The Tribunal has rightly made discussion in para 51 of the impugned award and held that Licence No. K-7193/D/78 was issued in the name of Karam Singh, son of Shri Betal Singh, whereas the licence of Krishan Singh bears No. K/7193/UA and further held that the said witness has not deposed anything relating to the licence of Krishan Singh. It is apt to reproduce para-51 of the impugned award herein:-

"The respondent no. 2 has also tried to make out that the driving licence of Sh. Krishan Singh was forged and has examined Sh. Mukata Kanoja who was posted as licence clerk in R.T.O Office, Dehradun, as RW-1 and he has deposed that licence bearing no. K-7193/D/78 was issued in the name of Sh. Karam Singh son of Sh. Betal Singh and report was Ext. R.A. The report Ext. RA is in respect of driving licence no. K- 7193/D/78 whereas the licence of Sh. Krishan Singh bears no. K/7193/UA and the said report is not connected with the driving licence of Sh. Krishan Singh. The report Ext. RA does not refer to the period of licence and as such also it is not connected with the number mentioned in the driving licence of Sh. Krishan Singh."

8. In the given circumstances, the insurer has not been able to prove that driver Krishan Singh was not having a valid and effective driving licence.

9. At this stage, learned Counsel for the appellant-insurer argued that the Tribunal has wrongly appreciated the evidence. The argument of the learned Counsel is devoid of any force for the following reason.

10. It was for the insurer to plead and prove that licence No. K/7193/UA was fake, has failed to do so. Thus, it has failed to discharge the onus.

11. The insurer, in order to seek exoneration, has to plead and prove that owner/ insured has committed any wilful breach, has failed to do so.

12. At this stage, learned Counsel for the appellant argued that the

compensation amount awarded in Claim Petition No. 117/2007 is excessive.

13. Admittedly, the age of the deceased was 19 years at the time of accident. The deceased was a bachelor. The Tribunal has made discussion regarding his monthly income from para 18 to 22 of the impugned award and has rightly assessed his monthly income Rs. 3500/- per month or Rs. 42,000/- per annum, but has fallen in an error in deducting ?rd towards the personal expenses of the deceased. 50% was to be deducted towards his personal expenses keeping in view the ratio laid down by the Apex Court in Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, reported in AIR 2009 SC 3104, upheld by a larger Bench of the Apex Court in a case titled as Reshma Kumari & others v. Madan Mohan and another, reported in 2013 AIR (SCW) 3120 read with the judgment rendered by the Apex Court in case titled as Munna Lal Jain & another v. Vipin Kumar Sharma & others, reported in 2015 AIR SCW 3105. Accordingly, it is held that the claimants have lost source of dependency to the tune of Rs. 21,000/- per month.

14. The Tribunal has rightly applied the multiplier of ''15''. Accordingly, the claimants are held entitled to the tune of Rs. 21,000/- x 15 = Rs. 3,15,000/- under the head ''loss of dependency''.

15. The Tribunal has also rightly awarded compensation to the tune of Rs. 15,000/- under the head ''conventional charges''.

16. Having said so, it is held that the claimants in Claim Petition No. 117/2007 are entitled to compensation to the tune of Rs. 3,15,000/- + Rs. 15,000/- total amounting to Rs. 3,30,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

17. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in their accounts.

18. The excess amount be refunded to the insurer through payees'' account cheque or by depositing the same in bank account.

19. Accordingly, the impugned award is modified, as indicated above, so far it relates to Claim Petition No. 117 of 2007. The impugned award in other claim petitions is upheld. The appeals are disposed of.

20. Send down the records after placing a copy of the judgment on each of the Tribunal''s file.

