
(2015) 12 SHI CK 0124

In the High Court Of Himachal Pradesh

Case No : FAO Nos. 141, 143, 154 and 155 of 2009

Kumari Vishav Bharti and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 12 SHI CK 0124

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

Bench : Single Bench

Advocate : Nimish Gupta, Advocate, for the Appellant; Deepak Bhasin, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

FAO No. 141 of 2009 and FAO No. 155 of 2009

1. Both these appeals are directed against the award, dated 1st January, 2009, passed by the Motor Accident Claims Tribunal-I, Kangra at Dharamshala, H.P., (for short, the Tribunal), whereby compensation to the tune of Rs. 1,92,000/-, came to be granted in favour of the claimant on account of the death of her mother, namely, Ms. Monika, and the insurer came to be saddled with the liability, (for short, the impugned award).

2. Feeling aggrieved, the claimant has questioned the impugned award on the ground of adequacy of compensation by way of FAO No. 141 of 2009 and the insurer has challenged the same by filing FAO No. 155 of 2009 on the ground that the Tribunal has wrongly fastened the insurer with the liability.

FAO No. 143 of 2009:

3. By the medium of this appeal, the appellants/claimants, being minor daughter, mother and father of deceased Rakesh Kumar, have laid challenge to the award,

dated 31st December, 2008, passed by the Motor Accident Claims Tribunal-I, Kangra at Dharamshala, H.P., (for short, the Tribunal), in Claim Petition No. 100-G/II-2004, titled Kumari Vishav Bharti and others v. Suresh Raina and another, whereby the claim petition came to be dismissed, (for short, the impugned award).

FAO No. 154 of 2009:

4. In this appeal, the appellant/insurer has challenged the award, dated 31st December, 2008, passed by the Motor Accident Claims Tribunal-I, Kangra at Dharamshala, H.P., (for short, the Tribunal), in Claim Petition No. 99-G/II-2004, titled Kumari Vishav Bharti and others v. Suresh Raina and another, whereby the claim petition came to be allowed and compensation to the tune of Rs. 1,00,000/- came to be granted in favour of the claimants, (for short, the impugned award).

5. All the appeals are the outcome of one accident, therefore, the same are being disposed of by a common judgment.

Facts:

6. Claimants invoked the jurisdiction of the Motor Accident Claims Tribunal under Section 166 of the Motor Vehicles Act, 1988, (for short, the Act), by the medium of Claim Petitions. It was pleaded that on 5th December, 2001, Rakesh Kumar alongwith his wife Smt. Monika, son (vasudev) and daughter (claimant Kumari Vishav Bharti) boarded Maruti Car bearing No. DL-4CA-7237, from Chamba to their house at Dehra in District Kangra, being driven by one Krishan Kumar. When the said car reached at village Bhali, at about 12.00 midnight, it fell off the road due to the rash and negligent driving of the driver, as a result of which Rakesh Kumar, Mrs. Monika and son Vasudev lost their lives.

7. Thus, the claimant Vishav Bharti filed the claim petition for grant of compensation to the tune of Rs. 20.00 lacs on account of the death of her mother namely Mrs. Monika, which came to be allowed by the Tribunal and a sum of Rs. 1,92,000/- came to be awarded, (subject matter of FAO Nos. 141 of 2009 and 155 of 2009). On account of the death of Rakesh Kumar, the claimants (daughter and parents of the deceased) filed the claim petition for grant of compensation to the tune of Rs. 20.00 lacs, which was dismissed by the Tribunal, (subject matter of FAO No. 143 of 2009). On account of the death of Vasudev, the claimants, being sister and grandparents, filed the claim petition for grant of compensation to the tune of Rs. 10.00 lacs, (subject matter of FAO No. 154 of 2009).

FAO No. 141 of 2009 & FAO No. 155 of 2009:

8. As discussed above, FAO No. 141 of 2009 has been filed by the claimant for enhancement of compensation, while FAO No. 155 of 2009 has been filed by the insurer on the ground that the Tribunal has fallen in error in fastening it with the liability. Thus, the questions involved in these two appeals are - i) Whether the amount awarded is excessive and; ii) whether the Tribunal has rightly saddled

the insurer with the liability.

9. The deceased Mrs. Monika was working as a Junior Basic Teacher on contract basis in a Government School. The salary of the deceased was Rs. 4351/-, which is not in dispute. The Tribunal has grossly erred in taking the loss of dependency to the tune of Rs. 1,000/- per month. If rounded off, the salary of the deceased can be taken as Rs. 4,500/- per month. After deducting 1/3rd towards the personal expenses of the deceased, the total loss of source of dependency can be said to be Rs. 3,000/- per month.

10. Admittedly, the deceased was 33 years of age at the time of accident. Keeping in view the 2nd Scheduled attached to the Motor Vehicles Act, 1988 read with the judgment 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, , the Tribunal has rightly applied the multiplier of 16.

11. Accordingly, the claimant is held entitled to compensation to the tune of Rs. 3,000/- x 12 x 16 = Rs. 5,76,000/- under the head loss of source of dependency. In addition, a sum of Rs. 10,000/- each, i.e. Rs. 30,000/- in all, is also awarded under the heads "loss of estate", "loss of love and affection" and "funeral expenses".

12. Having glance of the above discussion, the claimant is held entitled to Rs. 5,76,000/- + Rs. 30,000/- = Rs. 6,06,000/-, alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization, on account of the death of mother Mrs. Monika.

13. Coming to the next question as to who has to indemnify the amount of compensation, it is admitted fact that the offending vehicle was insured, at the time of accident, with the insurer. The insurer has not been able to prove that the offending vehicle was being driven in contravention of the terms and conditions contained in the insurance policy or that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident. Thus, it does not lie in the mouth of the insurer to claim that it was not liable to indemnify. Moreover, Mrs. Monika was a third party, therefore, the insurer cannot claim exoneration.

14. Having said so, the Tribunal has rightly fastened the liability on the insurer.

15. In view of the above discussion, FAO No. 141 of 2009 is allowed, the claimant is held entitled to Rs. 6,06,000/-, alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till realisation, on account of the death of Mrs. Monika. The insurer is directed to deposit the enhanced amount alongwith up-to-date interest within a period of eight weeks from today. Accordingly, FAO No. 155 of 2009 is dismissed.

FAO No. 154 of 2009:

16. The Insurer has questioned the impugned award whereby compensation to the tune of Rs. 1.00 lac, on account of the death of Vasudev (brother of Kumari Vishav Bharti), was granted by the Tribunal. Since the deceased was a third party, read with the discussion made hereinabove, the insurer came to be rightly saddled with the liability.

17. The amount of compensation is too meager. Unfortunately, the claimants have not questioned the impugned award, therefore, the same is reluctantly upheld.

18. Having regard to the above discussion, there is no merit in the appeal and the same is dismissed.

FAO No. 143 of 2009:

19. The claimants have filed the instant appeal since the Claim Petition filed by them on account of the death of Rakesh Kumar was dismissed by the Tribunal.

20. I have gone through the impugned award. The Tribunal, after referring to evidence led by the parties, has come to the conclusion and rightly so that the deceased Rakesh Kumar was the owner of the offending vehicle and that he had obtained the insurance cover which never covered the risk of the owner. The Tribunal has rightly made the discussion in paragraphs 11 to 16 of the impugned award.

21. Having said so, no infirmity can be found with the award impugned in this appeal and, therefore, the same needs to be upheld. Accordingly, the appeal is dismissed. However, the claimants are at liberty to seek appropriate remedy by resorting to appropriate proceedings. In case the claimants resort to any such proceedings, the period spent by the claimants from the date of filing of the Claim Petition till today shall be excluded while computing the period of limitation.

22. All the appeals stand disposed of accordingly.