

(2013) 05 SHI CK 0035

In the High Court Of Himachal Pradesh

Case No : FAO No"s. 394 and 395 of 2006

M/s. Braham Dass and Another

APPELLANT

Vs

National Insurance Company and Others
 Shri. Ramnik
Kumar Vs Randhir Singh and Others

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) 3 ACC 888 : (2013) 2 ShimLC 1171

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Vikas Sanoria in FAO Nos. 394 of 2006 and Mr. Ramakant Sharma in FAO Nos. 395 of 2006, for the Appellant; Ramakant Sharma, Advocate for Respondent No. 3, None for Respondent No. 4 and Ms. Monika Shukla, Advocate vice Mr. Ashwani Kumar Sharma, Advocate for Respondent No. 5 in FAO Nos. 394 of 2006 and FAO Nos. 395 of 2006 for Respondent No. 2 and Mr. Vikas Sanoria, Advocate for Respondents 3 and 4 in FAO No. 395 of 2006, for the Respondent

Judgement

Dev Darshan Sood, J.—Both these appeals are being disposed of by this common judgment as they arise out of the same judgment passed by the learned Motor Accident Claims Tribunal-(1), Kangra at Dharamshala. The brief facts of the case as pleaded are that petitioner Randhir Singh was working as a mason and had suffered amputation of his right arm from the accident which occurred on May 31, 2002. The case pleaded is that claimant Randhir Singh was going to his house on May 31, 2002 in Bus No. HP-38-7674 being driven by Vikramjit Singh in a rash and negligent manner. At around 4.15 P.M. when the bus reached near Saw-mill, after crossing the Chaugan at Nurpur, truck No. HP-37-2049, driven by Milap Chand and owned by Gian Chand (both appellants in FAO No. 394 of 2006) came from the opposite direction. This truck was being driven in a rash and negligent manner due to which drivers of both the bus and truck could not maintain safe distance between them, as a result of which the right arm of the claimant was struck and was separated from his body. It is pleaded that both the drivers Vikramjit Singh and Milap Chand were rash and negligent and responsible

for this accident. The claimant was rushed to Civil Hospital, Nurpur, from there to the PGI, Chandigarh, then he was taken to Dayanand Medical College and Hospital, Ludhiana ("DMC" for short), where he remained admitted from 31st May, 2002 to 11th June, 2002 and was visiting this hospital for follow up treatment. The case was reported to the police at Nurpur on 31st May, 2002 itself and FIR No. 167 of 2002 was registered. The petitioner claims compensation for medical treatment, for loss of his earning capacity, pain and suffering, quantifying the claim at Rs. 20 lacs. Respondent denied negligence and the allegations made were refuted with a prayer that the claim petition be dismissed. Five issues were settled by the learned Tribunal on the pleadings of the parties. Two being the core of adjudication, namely; (1) whether on 31.5.2002 the claimant suffered injuries because of the rash and negligent driving of the bus as also of that of the truck being driven by the 2nd and 5th respondents before the Tribunal, (2) whether the claimant was entitled to the compensation, as claimed, or any other amount and if so from whom. The other issues to be adjudicated were with respect to the validity of the driving licence of the 2nd respondent before the Tribunal Vikramjit Singh, and 5th respondent Milap Chand.

2. The United India Insurance Company had also pleaded that the bus was being plied in violation of the route permit. On the issue of driving licence, the learned Tribunal holds that the 2nd respondent Vikramjit Singh was in possession of a valid driving licence Ex. RW-1/A, issued from the office of the Sub Divisional Magistrate, Nurpur and proved on record by RW-1 Khem Raj, Motor Licencing Clerk. On the fourth issue with respect to the validity of the driving licence of 5th respondent Milap Chand, driver of the truck, the Tribunal notes that despite repeated opportunities having been granted to this respondent before the Tribunal for producing on record the driving licence and the particulars thereof, he did not do so, coupled with the fact that nobody on behalf of the owner stepped into the witness box to state that Milap Chand had a valid driving licence. The issue was held against the driver and the owner. On issue No. 4-A, which was with respect to the breach of the insurance policy that the bus did not have a valid route permit, the learned Tribunal records the admission made on oath by Ramnik Singh, RW-2 that he had no permit for the bus to ply it at the place of the accident and in this eventuality this issue was also held against the owner and in favour of the Insurance Company. Cumulative effect of this evidence was that the bus was being driven by Ramnik Kumar, the 1st respondent before the Tribunal, who in fact had a valid driving licence, but there was no valid route permit as noticed. The truck was being driven by the 5th respondent Milap Chand who did not produce any valid driving licence and in this eventuality both the Insurance Companies were exonerated from liability.

3. On the first two issues and especially on the issue of negligence, the learned Tribunal takes into consideration the evidence on record which is that of the claimant Randhir Singh PW-4 and PW-5 Fauji Ram. Adverting to this evidence, the Tribunal records that claimant states that he was traveling in bus No.

HP-38-7674 and was sitting on the window seat. The bus was being driven in a very rash and negligent manner. Truck No. HP-37-2049 came from the opposite side and grazed the bus as a result of which the claimant lost his right arm which was separated from the body. He states that both the vehicles were being driven in a rash and negligent manner. He was immediately taken to hospital at Nurpur from where he was referred to PGI, Chandigarh and then taken to DMC, Ludhiana where he was treated. He denied the case of the respondents as put to him in cross examination. In a nut shell the defence was that the claimant was hanging his arm out of the window of the bus. The suggestion that the truck as also the bus were being driven in a careful and normal manner and at a very slow speed was denied. PW-5 Fauji Ram corroborates the claimants and states that the appellant had kept his arm on the window but did not stick it out or raised his hand while shouting slogans etc.

4. RW-2 Ramnik Kumar, owner of bus No. HP-38-7674, stated that the bus was being driven by Vikramjit Singh and that he himself was traveling in the bus. When it reached near Jessore Railway Crossing its tyre got punctured whereupon it was brought back about 1/2 / 3/4 kilometer for repair work. After repairing/fixing the puncture, when the bus was proceedings to its destination, truck bearing No. HP-37-2049 came from the opposite side. It was being driven on the wrong side and on noticing this, Vikramjit Singh driver of the bus drove it on the un-mettled portion of the road and stayed there, but the truck could not be controlled as it was being driven at a very fast speed. This is the only evidence on record with respect to the factum of negligence.

5. Ex. PW-1/A, FIR which was registered against the driver of the truck only, was pressed into service by the appellant to urge that the case is registered only against the driver of the truck. The learned Tribunal discards this submission by holding that the FIR is not the basis of the decision of the case and did not doubt the veracity of the evidence on record and holds that in these circumstances attributes negligence on both drivers of the truck and the bus. The learned Tribunal relying upon the decision of State of Haryana and Another Vs. Ram Pal and Another, , holds that merely because the arm of the claimant was resting on the window sill there could be no contributory negligence attributed to the claimant.

6. Adverting to the evidence on the question of disability and the injuries suffered by the claimant, PW-2 Dr. Shushma Sharma stated that on 31st May, 2002 at around 4.30 P.M., the claimant was brought to the hospital in an injured condition and was carrying his severed arm separately. She proved on record Ex. PW-2/A which records these facts.

7. PW-3 Dr. S.C. Kaverlal was posted at Rajinder Prashad Medical College and Hospital, Kangra and working as Assistant Professor in the Department of Surgery. He was a Member of the Disability Board which examined the petitioner and issued Ex. PW-3/A which has been signed by him as a Member. The claimant was certified as suffering from locomotor impairment, which is of permanent. His

disability was assessed at 85%. The certificate records amputation of the right arm above the elbow.

8. PW-7 Dr. Arvinder Singh, Senior Registrar, Department of Ortho, DMC, Ludhiana, has proved on record Ex. PW-7/A which records that claimant was struck on the right elbow and crushed the right forearm. The arm with the elbow was brought to the hospital in a polythene bag, but the muscles were badly crushed. He was taken for surgery for amputation of the right upper limb which was performed on 1.6.2002. He states that the claimant cannot perform any work in future. The medical treatment is proved on record as Ex. PW-7/A.

9. It is on this evidence that the learned Tribunal awarded an amount of Rs. 4,14,720/- after calculating daily earnings of the claimant as Rs. 75/- per day which was the minimum wages payable to a daily wager in Himachal Pradesh. Since he had suffered 85% permanent disability, the loss of earning capacity was assessed at Rs. 64/- per day which comes to Rs. 1920/- per month and Rs. 23,040/- per annum. The age of the claimant was 25 years, therefore, a multiplier of 18 was adopted and an amount of Rs. 4,14,720/- was awarded under this head. Since the claimant had suffered severe injuries, an amount of Rs. one lac was awarded for pain and suffering. A total amount of Rs. 5,40,610/- was awarded which included hospitalization and medical charges.

10. Learned counsel appearing for the appellants submits that the findings of the learned Tribunal do not stand established in both the appeals on the grounds that the compensation is unduly large and the appellants M/s. Brahm Dass Gian Chand and Milap Chand in FAO No. 394 of 2006 have been wrongly held liable for payment of compensation as there was no negligence proved on the record. Contributory negligence, which was common ground in both these appeals, is not proved. Ramnik Kumar, owner of the bus, pleads that the findings of the learned Tribunal with respect to the award cannot be sustained as the bus was being driven on a valid route permit, there was no negligence. It was submitted that the bus had to be taken for repair work in which eventuality small distance covered could not amount to a deviation from the permitted route.

11. Adverting to this aspect first, I note that there is no evidence on the record to show that the bus had infact sustained a puncture and that it was taken for repair to a mechanic. If that was the case, the evidence, in the nature of amount paid to the mechanic and the person who had actually repaired the bus / puncture, should have been brought on the record which has not been done. To urge, in these circumstances, that no liability could be attributed to the owner of the bus and in this eventuality, the liability, if any, was that of the Insurance Company, cannot be accepted. The learned Tribunal records as a fact that the statement on oath of the owner of the bus that he had no valid route permit of the place where it was being plied, conclusively establishes the infraction of the Insurance Policy.

12. Adverting to the other aspect that of the truck driver, what I find from the

record is that no evidence has been led to establish the claim that truck was being driven by the driver possessing a valid driving licence, despite a number of opportunities having been granted to the owner as well as driver to prove the licence. I also note that on the quantum the amount awarded cannot be described as excessive. Surely, when the person has lost his entire capacity to work, which fact has been proved on record by the doctor, it cannot be said that the award amount is without any foundation. In these circumstances, both these appeals are dismissed with costs throughout.