
(2005) 06 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : C.M.P. M.O. No. 219 of 2004

National Insurance Co. Ltd.	Vs	APPELLANT
Dhanbir Kumar and Others		RESPONDENT

Date of Decision : 22-06-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 166, 168, 169

Citation : (2005) 4 ACC 20 : (2006) ACJ 1540 : (2005) 2 ShimLC 260

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : Deepak Bhasin, for the Appellant; Kuldip Singh, Sheetal Kimta, Sunita Sharma and Sandeep Agnihotri, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—In this petition filed under Article 227 of the Constitution of India, petitioner insurer has challenged the judgment and award dated 31.3.2004 passed in M.A.C. Petition No. 147-N/2 of 2001 whereby claimant-respondent No. 1, has been awarded a compensation of Rs. 2,000 for having sustained "simple injuries". Whereas respondent No. 1 in this petition was the claimant before Claims Tribunal, respondent Nos. 2 and 3 herein were the owner and the driver respectively of the vehicle involved in the accident.

2. Common ground between the parties is that an accident involving vehicle No. HR 37-3920 occurred on 21.2.2001 allegedly due to rash and negligent driving of this vehicle by its driver, Baryam Singh, respondent No. 3.

3. The respondent No. 1 and various other persons were travelling in this bus at the time of the mishap. All these persons claiming to have been injured in this accident filed their individual claim petitions and by a common judgment/award the Tribunal disposed of all these claim petitions, Claim Petition No. 147-N/2 of 2001 being one of them. Following five issues were framed by the Tribunal for adjudication in these cases:

(1) Whether petitioners, Balbir Singh, Farida, Salamu Deen, Khem Raj, Lata Devi, Krishan Lal, Neelam Rani, Dhanbir Kumar, Gagan Kumar and Balkish sustained injuries in a motor accident caused by rash and negligent driving of a bus No. HR 37 3920 by its driver, Baryam Singh, respondent No. 2, near Bhairon Temple in Kala Amb village, on 21.2.2001? OPP

(2) If issue No. 1 above is proved, what amount the petitioners are entitled to receive as compensation and from whom? OPP

(3) Whether the driver of the bus did not possess a valid and effective driving licence at the time of accident? If so, to what effect? OPR-3

(4) Whether the bus involved in the accident was being plied in violation of the terms and conditions of the insurance policy at the material time? If so, its effect? OPR-3

(5) Relief.

4. After returning a finding in favour of the claimants on issue No. 1 and thus holding that the accident occurred because of rashness and negligence on the part of respondent No. 3 in driving the aforesaid vehicle, the Tribunal proceeded to determine compensation in all individual cases and it is in this background that insofar as the claim petition of the respondent No. 1 is concerned, an award of Rs. 2,000 was passed in his favour.

5. Para 28 of the judgment and award impugned herein reads thus:

(28) Petitioner Dhanbir maintained as PW 6: In this accident, I sustained injuries on my back and other parts of the body. I was taken to a hospital where I remained under treatment for a month. During this period, I remained on complete rest. At that time, I was working in Umeed Khanna Foundation and getting Rs. 2,000 per month. Due to this occurrence, I remained absent from my job for about 2 months and, therefore, sustained loss of Rs. 4,000. Rs. 10,000 were spent on my treatment.

6. Thus after reproducing the specific case of the claimant-respondent No. 1, about his having sustained injuries on his back and other parts of the body and his having been taken to the hospital where he remained under treatment for one month as well as his specific case that during this period he remained on complete rest and that he was working in a particular concern and getting Rs. 2,000 per month and his having remained absent from his employment/job for 2 months, Tribunal in para 29 noticed that claimant-respondent No. 1, did not lead any evidence to substantiate any of the above referred specific pleas. Para 29 of the judgment/award being apposite is quoted hereinbelow which reads thus:

(29) This deposition does not appear to be entirely true, since in substantiation thereof petitioner Dhanbir did not choose to bring on record any corroborative evidence, not even any treatment record. I am, therefore, not disposed to accept his claim. He, to my mind, must have sustained simple injuries. So, on account

of the pain and suffering, the compensation he deserves to be awarded is assessed at Rs. 2,000.

7. Despite clearly noticing that the claimant-respondent No. 1, had not produced any evidence to substantiate these aforesaid pleas Tribunal nonetheless proceeded to award Rs. 2,000 as compensation in favour of the claimant-respondent No. 1, by a process of conjecturing whereby the Tribunal appears to have led itself to conjecture that the claimant must have sustained "simple injuries".

8. Section 166 of Motor Vehicles Act, 1988 talks of the victims of the accident filing applications for award of compensation. Section 168 of the Act stipulates that on receipt of such an application for compensation the Claims Tribunal shall, after giving notice of the application to the opposite parties hold an inquiry into the claim. Section 169 of the Act provides that for the purpose of holding an inquiry as stipulated u/s 168 the Tribunal shall have all the powers of a civil court and that it may take evidence on oath and also enforce the attendance of witnesses and of compelling the discovery and production of documents and material objects. A cumulative reading of Sections 166, 168 and 169 of the Act clearly leads one to conclude, without any manner of doubt that whenever an application for compensation is filed before a Claims Tribunal, insofar as the allegations forming the subject-matter of the application are concerned, Claims Tribunal has to hold an inquiry and based on such inquiry an award has to be passed by the Tribunal. Even dehors these three specific sections, the principles of natural justice as well as fair play also demand that whenever an application for compensation is made by a person claiming in such an application that arising out of an accident he has received some injuries and that he has suffered some loss, such an applicant is under a statutory and common law obligation to prove all the material facts as well as material particulars in support of his allegations as well as his pleas, It is in this background that I now propose to examine the correctness and legality of the award under challenge in this petition.

9. Even though the claimant-petitioner had alleged in the claim petition that he had sustained injuries on his back and other parts of the body and that he was taken to a hospital where he remained under treatment for one month as well as on complete rest, not an iota of evidence was produced by him to prove any fact about sustaining the injuries on any part of his body or his having remained under treatment for one month or for any period in a hospital or that he had been advised bed rest or complete rest for any period. Undoubtedly medical evidence was the best piece of evidence, which was also required to be corroborated by the evidence based on the record of the hospital concerned. Not only that, the claimant also alleged that he was working with a particular concern and was drawing Rs. 2,000 per month and that because of his injuries he had to remain absent from his job for two months. Not an iota of evidence was produced to prove either the fact that claimant was working anywhere or the fact that he was drawing any emoluments or that he had to remain absent for any

period owing to injuries that he sustained in the accident. In such like fact situations, the mere bald statement of a claimant is of no relevance or significance in determining either the amount of compensation that can be paid to the claimant or even in returning a finding that claimant is entitled to any compensation. The bald assertion of the claimant in his own deposition, totally uncorroborated by any evidence with respect to material facts and material particulars, loses any significance and becomes totally irrelevant as far as either the determination of the compensation amount or returning a finding even with respect to his basic entitlement to claim compensation is concerned. Yes, there can be cases where a claimant may succeed in proving the factum of accident and also in proving that the accident had occurred because of rashness and negligence of the driver but the matter does not rest there because as far as his entitlement to claim compensation as well as the amount of compensation is concerned, he has to lead evidence to establish the entitlement part as well as to establish the determinative factors which will help the Tribunal in awarding adequate and reasonable amount of compensation. Viewed thus, I have no hesitation in holding that the Tribunal totally misdirected itself by adopting the process of conjecturing and admittedly without any evidence being on record in awarding compensation, even though a meagre amount of Rs. 2,000 for the "simple injuries" that Claims Tribunal thought the claimant had sustained. Even for suffering of simple injuries some sort of evidence had to be produced. In this case since the claimant had not produced any evidence, he clearly was disentitled to any compensation whatsoever.

10. Under the scheme of Motor Vehicles Act, 1988, the Tribunal does not distribute charity to the claimants. Its jurisdiction is confined to awarding compensation only if the facts and circumstances of a particular case warrant the awarding of the compensation. It is not that in every case brought before the Tribunal, compensation has to be awarded, whether the claimant has made out a case in his favour or not made out any case. The compensation has to be awarded only after an inquiry with respect to the allegations contained in the application for compensation is held and completed and if, based on the result of such inquiry, the Tribunal decides that the applicant has established a case entitling him for the grant of compensation, it proceeds to determine the amount of compensation based on well established parameters which have a direct nexus and close bearing to the evidence to be produced before the Tribunal by the claimants for arriving at a reasonable and just amount of compensation. No amount of compensation can be awarded based on conjectures of the Tribunal or the ipse dixit of a claimant.

11. In the present case, precisely what has happened is that claimant did not lead any evidence nor did he prove in any other manner as to what injuries he had sustained and as to how did he suffer any loss on account of such injuries and, therefore, he was entitled to receive a particular amount of compensation. I have thus no hesitation in holding that the Tribunal misdirected itself in awarding the compensation, even though the amount of compensation was a mere and

meagre Rs. 2,000.

12. For the foregoing reasons, this petition is allowed. The impugned award is set aside. No order as to costs.

C.M.P. No. 344 of 2004.

13. In view of the disposal of the main petition, this application is also disposed of and the interim order dated 26.7.2004 stands vacated.