

(2014) 05 SHI CK 0122
In the High Court Of Himachal Pradesh
Case No : FAO No. 556 of 2008

National Insurance Company Limited	Vs	APPELLANT
Smt. Sarla Devi and Others		RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 167
Penal Code, 1860 (IPC) — Section 279, 304-A, 337

Citation : (2014) 05 SHI CK 0122

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

Bench : Single Bench

Advocate : Jagdish Thakur, Advocate for the Appellant; Naveen K. Bhardwaj, Advocate for Respondents-claimants No. 1 to 5 in FAO No. 556 of 2008 for Respondents-claimants No. 1 and 2 in FAO No. 557 of 2008, Mr. Nimish Gupta, Advocate for Respondent No. 6. in FAO No. 556 of 2008 and for Respondent No. 3 in FAO No. 557 of 2008, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. Both these appeals are outcome of a motor vehicular accident, which took place on 13.2.2007 at about 9.20 PM at Dunga Mod, Triyodi, Tehsil and District Chamba, in which the driver, namely, Shri Chain Singh and one occupant, namely, Shri Bhan Singh lost their lives.

2. The claimants filed claim petitions before the Tribunal for the grant of compensation. The legal representatives of deceased Bhan Singh filed a claim petition being MAC Petition No. 4 of 2007 on 13.3.2007, which was decided on 30.6.2008 and the claimants-legal representatives of deceased Chain Singh also filed claim petition being MAC Petition No. 7 of 2007 on 30.3.2007, which was decided on 30.6.2008 by the Tribunal. The claimants in MAC Petition No. 4 of 2007 had sought compensation to the tune of Rs. 25,00,000/- as per the breakups given in the claim petition.

3. The insurer-appellant and owner of the vehicle, namely, Shri Naridner Kumar Puri contested the claim petition and filed separate replies.

4. The Tribunal, on the basis of the pleadings of the parties framed the following issues:-

1. Whether on 14.2.2007 at about 9/9.30 PM at Dunga Mod near Koti, Distt. Chamba, Shri Bhan Singh, husband of petitioner No. 1 and father of petitioners No. 2 to 4 and son of petitioner No. 5 died in a vehicular accident due to rash and negligent driving of Shri Chain Lal driver who also perished in the said accident, as alleged? ...OPP

2. If issue No. 1 is prayed, to what amount of compensation the petitioners are entitled to and from whom?...OP Parties.

3. Whether the petition is not maintainable in the present form? ...OPR.

4. Relief.

5. The Tribunal, after examining the pleadings and other documents, awarded Rs. 10,42,224/- as compensation alongwith interest @ 7.5% and saddled the insurer-appellant with liability.

6. In MAC Petition No. 7 of 2007, the Tribunal, on the basis of the pleadings of the parties framed the following issues:-

1. Whether on 13.2.2007 at about 9.20 PM at Dunga Mod Pargna Triyodi, Tehsil and Distt. Chamba, Shri Chain Singh, husband of petitioner No. 1 and father of petitioner No. 2 died in a vehicular mishap, as alleged,...OPP.

2. If issue No. 1 is proved, to what amount of compensation, the petitioners are entitled and from whom?...OP Parties

3. Whether the petition is not maintainable in the present form?...OPR

4. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident?...OPR

5. Whether the offending vehicle was being driven in contravention of conditions of insurance policy?...OPR

6. Whether deceased Chain Lal had taken the keys of the offending vehicle from the pocket of respondent No. 1 and drove it towards Dunga Mod without his knowledge?...OPR

7. Relief.

7. The Tribunal after hearing the arguments and scanning the evidence, awarded Rs. 3,85,000/- as compensation alongwith interest at the rate of 7.5%.

8. Learned counsel for the insurer-appellant argued that the claim petitions were not maintainable and the Tribunal has wrongly awarded compensation in both the

cases.

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9. Deceased Bhan Singh was sole bread earner of his family/claimants, became the victim of the accident, the claimants have lost source of dependency and became hapless and helpless. They have placed on record FIR No. 46/07 Ext. PW-3/A, which was registered in Police Station Sadar, Chamba under Sections 279, 337, 304-A of Indian Penal Code. The salary of the deceased was Rs. 11,673/- as per last pay certificate Ext. PW-2/A.

10. The Tribunal after examining the evidence and material, held that the claimants have lost source of dependency to the tune of Rs. 7,782/- per month and held that the multiplier of 11 was just and appropriate multiplier applicable in the given circumstances of the case.

11. Learned counsel for the appellant has not been able to carve out a case for interference. Thus, the findings so far it relates to loss of dependency and multiplier applied are legal one and as per the provisions of Motor Vehicles Act (for short "the Act"), are to be upheld.

12. The Tribunal has deducted 1/3rd from the salary of the deceased as pocket expenses, whereas 1/4th was to be deducted while keeping in view the mandate of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, read with judgment of the Apex Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , but unfortunately, the claimants have not questioned the same.

13. Learned counsel for the appellant has not questioned the findings on the other issues. However, I have gone through the evidence, claimants have proved that Chain Singh was driving the offending vehicle rashly and negligently and caused the accident, in which Shri Bhan Singh lost his life. Thus, the findings recorded by the Tribunal are upheld.

14. Having said so, the impugned award is upheld and the appeal being FAO No. 556 of 2008 is dismissed.

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15. The only question raised by the appellant in this appeal is that the claim petition was not maintainable because the claimants are the legal representatives of the deceased driver, who lost his life in the said accident. Admittedly, the claimants are the dependents of driver Chain Singh. In terms of Section 167 of the Act, the legal representatives have the right to file claim petition either before the authority under the Workmen's Compensation Act or before the Tribunal. They have exercised option, filed the claim petition before the Tribunal in the year 2007, and if the claim petition is to be dismissed on this ground alone after a lapse of 7 years, that would be travesty of justice. It is also to be kept in mind that the limitations, fetters and hyper technicalities, cannot be

a ground for showing door to the claimant(s).

16. Keeping in view the provisions of Workmen's Compensation Act read with the Schedule, the amount awarded is just and appropriate. Accordingly, the impugned award is upheld and the appeal is dismissed.