

(2015) 11 SHI CK 0026
In the High Court Of Himachal Pradesh
Case No : FAO Nos. 530 and 707 of 2008

National Insurance Company Ltd. and Others	APPELLANT
Vs	
Jagtamba and Others	RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173

Citation : (2015) 11 SHI CK 0026

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

Bench : Single Bench

Advocate : Shilpa Sood, Advocate, for the Appellant; Vijay Verma, Advocate, for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.

1. Both these appeals are outcome of a vehicular accident, thus, I deem it proper to determine both these appeals by this common judgment.
2. Challenge in both these appeals is to the judgment and award, dated 31.05.2008, made by the Motor Accident Claims Tribunal, Bilaspur, H.P. (for short "the Tribunal") in M.A.C. Case No. 88 of 2005, titled as Smt. Jagtamba and others versus Shashi Bhushan and others, whereby compensation to the tune of Rs. 7,08,400/- with interest @ 6% per annum from the date of filing of the petition till its realization came to be awarded in favour of the claimants and appellant-National Insurance Company Limited, i.e. insurer of jeep, bearing registration No. HP-23A-7474, was saddled with liability (for short "the impugned award").
3. Appellant-insurer of the jeep has questioned the impugned award by the medium of FAO No. 530 of 2008, on the grounds taken in the memo of the appeal.
4. By the medium of FAO No. 707 of 2008, the claimants have called in question the impugned award on the ground of adequacy of compensation.

5. The insurer of the motor cycle, bearing registration No. HP-24A-3906, the insured-owners and the drivers of both the offending vehicles have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

FAO No. 530 of 2008

6. Learned counsel for the appellant argued that the accident was outcome of the contributory negligence of both the drivers, namely Shri Shashi Bushan and Shri Kashmir Singh, who were driving the offending vehicles rashly and negligently at the time of the accident and the Tribunal has fallen in an error in saddling the appellant with the entire liability.

7. Thus, the only question to be determined in this appeal is - whether the accident was outcome of the contributory negligence of the drivers of both the offending vehicles?

8. The claimants have specifically pleaded in the claim petition that the accident had taken place due to the rash and negligent driving of the drivers of the jeep and the motor cycle, which has not specifically been denied by the respondents before the Tribunal.

9. On the pleadings of the parties, the Tribunal framed six issues on 25.07.2006. Since the dispute revolves around issues No. 1 and 2, I deem it proper to reproduce only issues No. 1 and 2 herein:

"1. Whether the deceased Amar Singh died in the accident due to contributory negligence on the part of the respondent No. 1 & respondent No. 3 by driving their respective vehicles No. HP - 23A - 7474 & HP-24A-3906 respectively, as alleged?...OPP

2. If issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled to and from which of the respondent(s)?...OPP"

10. Parties have led evidence in support of their claims.

11. The Tribunal has discussed all the facts and the evidence, oral as well as documentary, but has fallen in an error in holding that the accident was not the outcome of contributory negligence.

12. The Tribunal has held that the FIR, Ext. PW-3/A, is not a conclusive evidence and, prima facie, came to the conclusion that accident was outcome of the rash and negligent driving of the driver of the jeep, i.e. Shashi Bhushan.

13. The said finding of the Tribunal is not legally correct for the following reasons:

14. First Information Report (for short "FIR") is the first narration when the accident takes place. FIR, Ext. PW-3/A, does disclose that the accident was outcome of the contributory negligence of the drivers of both the vehicles.

15. The standard of proof in claim petitions is on different footings as compared

to the standard of proof required in criminal cases. In a claim petition, only prima facie proof is required and strict pleadings and proofs are not required.

16. My this view is fortified by the judgment rendered by the Apex Court in the case titled as Dulcina Fernandes and others versus Joaquim Xavier Cruz and another, reported in (2013) 10 Supreme Court Cases 646. It is apt to reproduce relevant portion of paras 8 and 9 of the judgment herein:

"8. In United India Insurance Company Ltd. Vs. Shila Datta and Others, , while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-Judge Bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow:

"10. (ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal.

* * *

(v) Though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation.....

(vi) The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry."

9. The following further observation available in para 10 of the Report would require specific note: United India Insurance Company Ltd. Vs. Shila Datta and Others,

"10. We have referred to the aforesaid provisions to show that an award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute."

(Emphasis added)

17. If the report of the police can be treated as claim petition, how can claimants be asked to plead the things/facts precisely and how can they be asked to prove the said pleadings by applying the principles stricto sensu as per the Indian Evidence Act.

18. The report in terms of Section 173 of the Code of Criminal Procedure Code (for short "Cr.P.C.") was presented before the Court of competent jurisdiction and both the drivers were tried. The Chief Judicial Magistrate, Bilaspur, District Bilaspur, H.P. (for short "the Magistrate") acquitted both the accused persons on the ground that the prosecution has failed to prove beyond reasonable doubt. The copy of the judgment made by the Magistrate has been produced in the open Court, made part of the file. Thus, both the drivers have not been acquitted

on the basis of benefit of doubt.

19. The final report and the FIR are the prima facie proofs that the accident was outcome of the contributory negligence. Even otherwise, the claimants have also led evidence and all of them have deposed that the accident was outcome of the contributory negligence. Viewed thus, the findings returned by the Tribunal on issue No. 1 are set aside and it is held that the claimants have proved the said issue.

20. Learned counsel for the insurer of the motor cycle has admitted the factum of insurance and has not argued that there was any breach on the part of the owner-insured of the motor cycle.

21. Having said so, the insurers of both the offending vehicles are to be saddled with liability in equal shares. The impugned award is modified and the appeal is disposed of, as indicated hereinabove.

22. At this stage, learned counsel for the appellant stated at the Bar that the appellant has already deposited the entire awarded amount. Her statement is taken on record.

23. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque.

24. Insurer of the motor cycle, i.e. The New India Assurance Company Ltd. is directed to deposit 50% of the awarded amount with interest before this Registry within six weeks. On deposition of the amount, the same be released in favour of the appellant.

FAO No. 707 of 2008

25. The claimants have filed this appeal for enhancement of the awarded amount.

26. I have gone through the impugned award. The Tribunal has rightly made discussions in para 15 of the impugned award and has awarded Rs. 7,08,400/- in favour of the claimants, needs no interference.

27. Having said so, the amount awarded is quite adequate, cannot be said to be meager in any way.

28. Viewed thus, the appeal for enhancement of compensation is dismissed.

29. Send down the record after placing copy of the judgment on the Tribunal's file.