

---

**(2015) 04 SHI CK 0067**  
**In the High Court Of Himachal Pradesh**  
**Case No : FAO No. 222 of 2010**

National Insurance Company Ltd.

APPELLANT

Vs

Ranjeeta and Others

RESPONDENT

---

**Date of Decision :** 10-04-2015

**Acts Referred:**

Constitution of India, 1950 — Article 41  
Motor Vehicles Act, 1988 — Section 158, 163-A, 166, 96

**Citation :** (2015) 04 SHI CK 0067

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

**Bench :** Single Bench

**Advocate :** Devyani Sharma, for the Appellant; Leena Guleria, Advocate vice and G.R. Palsra, Advocates for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Mansoor Ahmad Mir, C.J.—The appellant-insurer has questioned the award dated 12th January, 2010, passed by the Motor Accidents Claims Tribunal (I) Mandi, District Mandi, H.P. (hereinafter referred to as "the Tribunal"), in Claim Petition No. 12 of 2008, whereby compensation to the tune of 4,17,500/- with interest @ 7.5% per annum from the date of filing of the claim petition, came to be awarded in favour of the claimants-respondents No. 1 to 4 herein and the insurer--National Insurance Company-appellant herein, was saddled with the liability, (hereinafter referred to as "the impugned award").

Brief Facts:

2. The claimants, being victims of the vehicular accident, filed a claim petition before the Tribunal, on 26th February, 2008, titled as Smt. Ranjeeta and others versus Arun Kumar and others, for grant of compensation to the tune of Rs. 7,20,000/-, as per the break-ups given in the claim petition, on the ground that one Raj Kumar had driven the bus bearing registration No. HP-31-6555, rashly and negligently, on 14.09.2001, at about 4.00 p.m., near Gupta Furniture House at Slapper, District Mandi, hit Maruti Van bearing registration No. HP-01-0517,

which was being driven by deceased, namely, Sanjay Kumar @ Sanju, who sustained injuries and succumbed to the injuries on the spot. The claimants have also pleaded in the claim petition that the deceased was earning Rs. 3300/- per month and they have lost their sole bread earner.

3. The respondents contested the claim petition on the grounds taken in their objections.

4. Following issues came to be framed by the Tribunal:

"1. Whether death of Sanjay Kumar was caused in an accident in which bus No. HP-31-6555 is involved? ...OPP

2. If issue No. 1 is proved, to what amount of compensation, the petitioner is entitled to and from whom? ....OPP

3. Whether the driver of bus No. HP-31-6555 was not holding a valid and effective driving licence to drive the bus at the time of accident? ...OPR-3

4. Relief."

5. The claimants have examined Head Constable Devinder Kumar (PW-1), Dr. H.K. Abrol (PW-2), Sh. Bittu Ram (PW-4) and Shri Sanju Kumar (PW-5). One of the claimants, Smt. Ranjeeta (widow), also appeared in the witness box as PW-3. The claimants have placed on record documents, i.e. Ex. P-A, copies of FIR, Ext. PB, post mortem report, Mark-A, death certificate, Ext. PC and Marks-B and D, certificates and Mark-C, driving licence of deceased Sanjay Kumar, in support of their case.

6. Arun Kumar, owner of the bus, appeared in the witness box as RW-1. The insurer has examined Sub Inspector Shiv Chand as RW-2. Respondents have also placed on record documents, i.e. Ext. RW-2/A -1 to Ext. RW-2/A-4, copies of statement, Ext. RW-1/A, FIR, Ext. RW-1/B, driving licence, Ext. RW-1/C, route permit and Ext. RW-1/D, Insurance policy.

7. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have proved that driver, Raj Kumar had driven the offending bus, rashly and negligently, caused the accident and caused injuries to deceased Sanjay Kumar @ Sanju, who succumbed to the injuries on the spot.

8. I have gone through the evidence and the documents on the record.

9. The claimants have proved that the driver, namely, Raj Kumar had driven the offending bus, rashly and negligently and caused the accident. The driver has not led any evidence nor stepped into the witness box. The insurer and insured have not led any evidence in rebuttal to the evidence of the claimants. Thus, the evidence led by the claimants has remained unrebutted. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

10. Before, I deal with issue No. 2, I deem it proper to deal with issue No. 3.

11. It was for the insurer to plead and prove that the driver of the bus, Raj Kumar, was not having a valid and effective licence to drive the said vehicle. It has failed to discharge the onus. The copy of the driving licence of driver Raj Kumar, Ext. RW-1/B, is on the file of the claim petition, issued by the Transport and Licensing Authority, Bilaspur, which does disclose that the driver was having effective and valid driving licence to drive the bus. Thus, it is held that the driver was having the valid and effective driving licence to drive the offending vehicle. Accordingly, the findings returned by the Tribunal on issue No. 3, are also upheld.

12. The claimants have pleaded and proved that the income of the deceased was Rs. 3,300/- per month. The Tribunal, after deducting 1/3rd of the income towards personal expenses of the deceased, held that the claimants have lost source of dependency to the tune of Rs. 24,000/- per annum. It has correctly applied the multiplier of "17", in view of the Schedule appended to the Motor Vehicles Act, 1988, for short "the Act" and ratio laid down by the Apex Court in case titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 and upheld by a larger Bench of the Apex Court in case titled as Reshma Kumari and Others Vs. Madan Mohan and Another, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 . The Tribunal has also awarded Rs. 9,500/- under the head "conventional charges".

13. It is apt to record herein that 1/4th of the income was to be deducted towards personal expenses, in view of the law laid down by the apex Court in the judgments, supra, and the claimants were also held to be entitled for compensation under the other heads, but they have not questioned the same. Thus, the findings recorded by the Tribunal on issue No. 2 are upheld.

14. The offending bus was insured with the appellant-National Insurance Company, which is not in dispute. The deceased was the third party, thus, the insurer came to be rightly saddled with the liability.

15. Learned Counsel for the appellant argued that the claimants had invoked the jurisdiction of the Tribunal by filing a claim petition under Section 163-A of the Act, which was not maintainable and the Tribunal was under legal obligation to dismiss the same.

16. It is immaterial whether the claim petition has been filed under Section 163-A or Section 166 of the Act, for the reason that the purpose, aim and object of granting compensation, is social one, is to be granted, as early as possible, in order to save claimants from social evils.

17. The Act has gone through a sea change in the year 1994 by amendment in terms of Act 54 of 1994. Amendment was made in Sections 158 and 166 of the Act. It is apt to reproduce sub Section 6 of Section 158 of the Act, herein:

"158. Production of certain certificates, licence and permit in certain cases.

(1).....

(2).....

(3).....

(4).....

(5).....

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

18. It provides that it is the duty of the police officer to send a copy of the report to the Claims Tribunal having jurisdiction and that report is to be treated as a claim petition in terms of Section 166, sub-section (4), which too was added in terms of the amendment by Act No. 54 of 1994 in the Act. It is profitable to reproduce Sub-section (4) of Section 166 herein:

"166. Application for compensation.

(1).....

(2).....

(3).....

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act."

19. Viewed thus, the argument of the learned Counsel for the appellant that the claim petition was to be dismissed, is devoid of any force.

20. The claimants have specifically pleaded in para-24 (i) of the claim petition that the bus driver has driven the vehicle rashly and negligently. The aforesaid para reads as under:--

"That on 14.09.2001, while Sh. Sanjay Kumar was driving a Maruti Van No. HP-01-0517 and was going from Slapper to Barmana, when the Maruti Van reached near Gupta Furniture House at Village Slapper at about 4.00 p.m., then a Bus No. HP-31-6555 which was being driven by the respondent No. 2 in a very high speed and also in a negligent manner collided with the Maruti Van, as a result of which Sanjay Kumar and one Joginder Kumar, who was the occupant of Maruti Van, died on spot. The driver of the bus by seeing Sanjay Kumar and

Joginder Kumar died on the spot, lodged the FIR against the deceased with a motive to save himself from the civil and criminal liabilities. As a matter of fact, there was no negligence on the part of Maruti Van driver."

21. Respondents No. 1 and 2 and the insurer in their replies to the aforesaid para, have not specifically denied the averments contained therein, thus stand admitted.

22. I deem it proper to reproduce the opening para and para 24(i) of the reply filed on behalf of respondent No. 4 herein:--

"In reply to opening para, it is submitted that the deceased Sanjay Kumar had come to purchase Maruti Van No. HP-01-0517 from the replying respondent and had taken the vehicle for the purpose of checking in order to verify the fitness of the vehicle with the representation that he will drive the same uptill one kilometer and will come back, but later on, the respondent No. 4 came to know that the van was hit by the bus No. HP-31-6555 in a rash and negligent manner being driven by the respondent No. 2."

24(i) In reply to this para it is submitted that the deceased Sanjay Kumar had come to replying respondent for purchasing the Maruti Van bearing No. HP-01-0517 from the respondent No. 4 and had taken the same for checking its fitness with the promise to drive it one kilometer only from the house of replying respondent but he took the same ahead and later on the respondent No. 4 came to know that the van was hit by the bus driver in a rash and negligent manner due to which the van was damaged badly and occupants received serious injuries and died. The driver of the bus taking undue advantage of the death of occupants of van lodged the FIR against the van driver."

23. Having said so, the claimants have specifically pleaded in the claim petition that the accident was outcome of rash and negligent driving of the bus driver and the respondents have not specifically denied the same.

24. It is beaten law of the land that procedural wrangles and tangles, procedural-technicalities, mystic maybes, niceties of law and other technical grounds cannot be pressed into service to defeat the purpose for granting compensation to the victims of the motor vehicular accident.

25. My this view is fortified by the judgment of the Apex Court in the case titled as N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, (1980) ACJ 435 : AIR 1980 SC 1354 : (1980) 41 FLR 152 : (1980) 3 SCC 457 : (1980) SCC(Cri) 774 : (1980) 3 SCR 101 : (1980) 12 UJ 414 . It is apt to reproduce relevant portion of para 3 of the judgment herein:

"3. Road accidents are one of the top killers in our country, specifically when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accident Tribunals must take special care to see that innocent victims do not

suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

(Emphasis supplied)

26. The Jammu and Kashmir High Court in the case titled as Oriental Insurance Co. Vs. Mst. Zarifa and Others, (1996) ACJ 222 : AIR 1995 J&K 81 , held that the MV Act is Social Welfare Legislation and the procedural technicalities cannot be allowed to defeat the purpose of the Act. It is profitable to reproduce para 20 of the judgment herein:

"20. Before concluding, it is also observed that it is a social welfare legislation under which the compensation is provided by way of Award to the people who sustain bodily injuries or get killed in the vehicular accident. These people who sustain injuries or whose kith and kind are killed, are necessarily to be provided such relief in a short span of time and the procedural technicalities cannot be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants."

27. It is also apt to reproduce relevant portion of para 12 of the judgment of the Apex Court in the case titled as Sohan Lal Passi Vs. P. Sesh Reddy and others, (1996) 2 ACC 617 : (1996) ACJ 1044 : AIR 1996 SC 2627 : (1998) 91 CompCas 526 : (1996) 5 JT 728 : (1996) 114 PLR 311 : (1996) 5 SCALE 388 : (1996) 5 SCC 21 : (1996) 3 SCR 647 Supp : (1996) 2 UJ 525 , herein:

"12.. While interpreting the "contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the

insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of Sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."

28. Rash and negligent driving is sine qua non for maintaining a claim petition seeking compensation in terms of the provisions of Section 166 of the Act.

29. My this view is fortified by the Apex Court judgment in case titled as Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Others, (2007) 8 JT 575 : (2007) 148 PLR 93 : (2007) 7 SCALE 725 : (2007) 13 SCC 476 : (2007) 6 SCR 780 . It is apt to reproduce para-10 of the judgment herein:--

"10. The insurer, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act."

30. The Apex Court in another case titled as Surender Kumar Arora and another Vs. Dr. Manoj Bisla and Others, (2012) ACJ 1305 : AIR 2013 SC 1918 : (2012) 4 SCC 552 : (2012) 3 TAC 353 , has laid down the same principle. It is apt to reproduce paras 9 and 10 of the judgment herein:

"9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that respondent No. 1 drew the vehicle in a rash and negligent manner which resulted in the fatal accident. Maybe, in order to help respondent No. 1, the claimants had not taken up that plea before the Tribunal. Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, (2001) 1 ACC 152 : (2001) ACJ 428 : AIR 2001 SC 485 : (2001) 1 JT 375 : (2001) 1 SCALE 1 : (2001) 2 SCC 9 : (2001) 1 SCR 8 : (2001) 1 UJ 464 : (2001) AIRSCW 85 : (2001) 1 Supreme 5 would have come to the assistance of the claimants.

10. In our view the issue that we have raised for our consideration is squarely covered by the decision of this Court in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, (2007) ACJ 1284 : AIR 2007 SC

1609 : (2007) 137 CompCas 116 : (2007) 5 JT 65 : (2007) 5 SCALE 269 : (2007) 5 SCC 428 : (2007) 4 SCR 641 . In the said decision the Court stated:

".....Therefore, the victim of an accident or his dependents have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

31. It would also be profitable to reproduce para-7 of the judgment rendered by the Apex Court in the case titled as Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another, (2013) 4 ACC 293 : (2013) ACJ 2712 : (2013) 10 AD 513 : AIR 2014 SC 58 : (2013) 13 JT 217 : (2013) 4 RCR(Civil) 751 : (2013) 12 SCALE 611 : (2013) 10 SCC 646 herein:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt. Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, (2009) ACJ 1725 : AIR 2009 SC 2819 : (2009) 5 JT 515 : (2009) 5 SCALE 706 : (2009) 13 SCC 530 : (2009) 6 SCR 362 : (2009) 6 UJ 2709 : (2009) AIRSCW 4298 . In United India Insurance Company Ltd. Vs. Shila Datta and Others, (2011) ACJ 2729 : AIR 2012 SC 86 : (2012) 2 JCC 849 : (2011) 12 JT 233 : (2011) 164 PLR 806 : (2012) 1 RCR(Civil) 582 : (2011) 2 SCALE 5 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:

"(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."

The following further observation available in paragraph 10 of the report would require specific note:

"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."

32. The Apex Court in another case titled as Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, (2009) ACJ 1725 : AIR 2009 SC 2819 : (2009) 5 JT 515 : (2009) 5 SCALE 706 : (2009) 13 SCC 530 : (2009) 6 SCR 362 : (2009) 6 UJ 2709 : (2009) AIRSCW 4298 has laid down the same principle. It is apt to reproduce paras 12 and 15 of the judgment herein:

"12. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimant's predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem vis-?-vis the averments made in a claim petition.

13.....

14.....

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

33. Mere recording of wrong section in the title clause of the claim petition, cannot be a ground to dismiss the same. The pleadings and the averments contained in the petition/plaint determine the jurisdiction. What relief is to be granted, is to be determined in terms of the pleadings of the parties read with the evidence on record.

34. Keeping in view the discussion made hereinabove, the appeal is dismissed and the impugned award is upheld.

35. The Registry is directed to release the entire compensation amount in favour of claimants, strictly as per the terms and conditions, contained in the impugned award.

36. Send down the records after placing copy of the judgment on the file of the claim petition.