
(2015) 03 SHI CK 0073
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 201 of 2007

National Insurance Company Ltd.

APPELLANT

Vs

Sandeep Chauhan and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) 03 SHI CK 0073

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

Bench : Single Bench

Advocate : Sandeep Sharma, Senior Advocate and Ajit Sharma, for the Appellant; Anil Jaswal, Advocates for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J.—Subject matter of this appeal is award, dated 31st August, 2006, made by the Motor Accident Claims Tribunal, Hamirpur, H.P. (for short "the Tribunal") in Claim Petition No. 54 of 2005, titled as Desh Raj versus Sh. Sandeep Chauhan and another, whereby compensation to the tune of Rs. 3,30,000/- with interest @ 9% per annum from the date of filing of the petition till its deposition came to be awarded in favour of the claimant and against the respondents (for short "the impugned award").

Brief facts:

2. Shri Desh Raj being the victim of vehicular accident filed a claim petition for grant of compensation to the tune of Rs. 6,50,000/-, as per the break-ups given in para 21 of the claim petition.

3. The case put forth by the claimant-injured in the claim petition is that the driver, namely Shri Sandeep Chauhan had driven the bus, bearing registration No. HP-67-7510, rashly and negligently on 11th May, 2005, at about 2.30 p.m. near Village Ukhali, District Hamirpur on Hamirpur-Bilaspur Highway, lost control and the offending vehicle rolled down. The claimant-injured, who had boarded the bus, sustained injuries, which have rendered him permanently disabled.

4. It is also averred in para 12 of the claim petition that he remained admitted in Regional Hospital on 11th May, 2005 to 7th June, 2005, and was under treatment till the time of filing of the claim petition.

5. The respondents, i.e. the owner-cum-driver and the insurer resisted the claim petition on the grounds taken in the respective memo of objections.

6. Following issues came to be framed by the Tribunal on 28th December, 2005:

"1. Whether the petitioner suffered injuries on account of rash and negligent driving of respondent No. 1 of Bus No. HP-67-7510? OPP

2. If point No. 1 is proved, to what amount and from whom the petitioner is entitled for compensation? OPR

3. Whether the respondent has not been in possession of a valid and effective driving licence at the time of accident, if so to what effect? OPR

4. Relief."

7. The claimant-injured has examined Dr. Dinesh Thakur as PW-1, HHC Jagat Ram as PW-2, Shri Khem Singh as PW-4, Shri Amar Nath as PW-5 and himself appeared in the witness box as PW-3. The owner-cum-driver has himself appeared in the witness box as RW-1 and the insurer has not led any evidence in support of its case.

8. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimant-injured has proved that the driver, namely Shri Sandeep Chauhan, has driven the offending vehicle rashly and negligently at the relevant point of time and the claimant-injured has sustained injuries.

9. The Tribunal, while assessing compensation, has also held the claimant-injured entitled to compensation to the tune of Rs. 3,30,000/-, while taking his loss of earning capacity to the extent of 40%. It was also held that the driver of the offending vehicle was having valid and effective driving licence. All the three issues came to be decided in favour of the claimant-injured and against the driver-cum-owner and the appellant-insurer.

10. Appellant-insurer has questioned the impugned award on the grounds of adequacy of compensation and that the driver of the offending vehicle was not having a valid and effective driving licence.

11. The claimant-injured and the driver-cum-owner have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

12. Having said so, the following two points are to be determined in this appeal:

"(i) whether the amount awarded is excessive?

(ii) whether the driver of the offending vehicle was not having a valid and effective driving licence?"

13. Before I deal with issues No. 1 and 2, I deem it proper to decide whether the driver of the offending vehicle was having the valid and effective driving licence, which covers issue No. 3.

Issue No. 3:

14. The owner-cum-driver, i.e. respondent No. 1 has produced the driving licence before the Tribunal, came to be exhibited as Ext. R-2, which was not rebutted or questioned by the appellant-insurer.

15. The Tribunal, after examining the evidence, oral as well as documentary, held that the driver of the offending vehicle was having a valid and effective driving licence and insured/owner-cum-driver has not committed any breach. Thus, the findings returned by the Tribunal on issue No. 3 are upheld.

Issues No. 1 and 2:

16. The claimant-injured has examined Dr. Dinesh Thakur as PW-1, who has deposed that the claimant-injured was admitted in hospital on 11th May, 2005, was operated on 28th May, 2005 and discharged on 7th June, 2005. He has proved the contents of discharge certificate, Ext. PW-1/A and the disability certificate, Ext. PW-1/B.

17. While going through Exhibits PW-1/A and PW-1/B, one comes to an inescapable conclusion that the claimant-injured has sustained injuries, but he has not suffered permanent disability for the reason that the doctor has said that it is recoverable within three to five years. However, he has stated that chances of recovery are bleak.

18. In Ext. PW-1/B, the disability has been shown to be 20%. The claimant-injured has failed to prove that he is not in a position to perform the job of a driver nor there is any evidence to that extent, as held by the Tribunal.

19. The Tribunal has granted Rs. 16,000/- under the head "loss of total income for a period of four months", Rs. 25,000/- under the head "expenses on treatment, attendant, transportation and special diet" and Rs. 20,000/- under the head "pain and sufferings and loss of amenities etc.", is too meager, cannot be said to be excessive in any way.

20. Even otherwise, there is proof on the file that the claimant-injured has incurred a huge amount for his treatment and was in hospital with effect from 11th May, 2005 to 7th June, 2005, at least for one month, was on bed rest and his disability was to be assessed every after five years.

21. The Tribunal has held that the income of the claimant-injured was Rs. 4,000/- per month at that point of time and he has lost source of income to the tune of Rs. 19,200/- per annum while taking the disability of the claimant-injured to the extent of 40%.

22. Admittedly, the claimant-injured is a driver by profession and would have

been earning not less than Rs. 4,000/- per month as a driver at the relevant point of time and by efflux of time, he would have been earning more. Thus, the Tribunal had to exercise the guess work while awarding compensation.

23. In view of the judgments rendered by the Apex Court in the cases titled as R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, ; Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. and Another, ; Ramchandruppa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, reported in 2011 AIR SCW 4787; and Kavita Vs. Deepak and Others, , the amount awarded cannot be said to be excessive.

24. The Tribunal has rightly awarded Rs. 2,68,800/- under the head "loss of future income", but has fallen in error while awarding 9% interest from the date of claim petition, was to be awarded from the date of award.

25. Accordingly, I deem it proper to modify the impugned award by holding that the claimant-injured is entitled to interest @ 7.5% from the date of award till its deposition.

26. Viewed thus, the appeal deserves to be allowed. Accordingly, the appeal is allowed and the impugned award is modified, as indicated hereinabove.

27. Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award after proper identification. Excess amount, if any, be released to the appellant-insurer through payee's account cheque.

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