

(2019) 05 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 566 Of 2018

New India Assurance Co. Ltd

APPELLANT

Vs

Kaushlya Devi And Others

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Code Of Criminal Procedure, 1973 — Section 173
Code Of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2019) 05 SHI CK 0009

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Praneet Gupta, Abhay Kaushal, T.S. Chauhan, Karan Sharma, B. S. Chauhan, Munish Dhatwalia

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The Insurer of the offending vehicle, has, instituted the instant appeal before this Court, wherethrough, it, casts, a, challenge, upon, the award pronounced by the learned Motor Accident Claims Tribunal , Una, H.P, upon, MACP No. 54 OF 2015, as stood, cast therebefore, under, the provisions of Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), (i) AND, whereunder, compensation amount comprised, in, a sum of Rs.9, 92,568/- alongwith interest accrued thereon, at the rate of 9% per annum, and, commencing from, the date of petition till realization thereof, stood, assessed, vis-a-vis, the disabled claimant The apposite indemnificatory liability thereof, was, fastened upon the insurer of the offending vehicle, appellant herein.

2. The learned counsel appearing, for, the appellant/insurer, has, contested the validity of findings recorded, upon, issue No.1, and, also thereonwards has contested the validity of fastening of the apposite indemnificatory liability, vis-a-vis, compensation as determined under the impugned award, was

proportionately fastenable upon the appellant herein, and, upon the insurer of the scooty (Activa) No.HP-20C- 7759, whereon the disabled claimant was astride, upon, its pillion, and, was at the relevant time driven by her husband, and, when FIR lodged, vis-a-vis, the occurrence, borne in Ex.PW2/A, makes trite echoings, vis-a-vis, both respondent No.2 herein, and, the husband of the disabled claimant being co-tortfeasor. The afore submission addressed by the learned counsel appearing for the insurer before this Court is unmeritworthy, as, assumingly, upon, affirmative findings being recorded, upon, his afore submission, enjoined the arraying of the husband of the disabled claimant, who at the relevant time was driving scooty (Activa) No.HP-20C-7759, and, also enjoined arraying in the memo of parties of the claim petition, in the array of respondents, the insurer of the afore scooty. Despite the pleadings in consonance therewith reared respectively, by the insurer of the offending vehicle, and, the respondents in their replies furnished to the claim petition, no endeavour was made each of them, by casting an application under the provisions of Order 1, Rule 10 of the CPC, to seek addition therethrough, in the array of co-respondents, of the husband of the disabled claimant, and, the insurer of the scooty (Activa) No.HP-20C-7759. Further plead that qua with Ex.PW4/A carrying communication qua both respondent No.2 herein, and, the husband of the disabled claimant, while driving their respective vehicle being co-tortfeasor, would not get any inference that the husband of the disabled claimant contributed to the relevant accident, as, a reading of the deposition of PW-4, appears to be the only solitary eye witness to the occurrence, who while stepping into the witness box as PW-4, has tendered in her examination-in-chief, her affidavit borne in Ex.PW4/A. During the afore course has rather therein ascribed tort of negligence, vis-a-vis, respondent No.2 herein, comprised in his driving the offending vehicle at a brazen speed, and, in a rash and negligent manner. The afore testification borne in Ex.PW4/A was concerted to be ripped of its efficacy by the counsel for the insurer while holding her to cross-examination, and, the suggestion for negating the rule of respondent No.;2, in causing collision, is, couched in the phraseology qua the husband of the disabled claim ant not awaiting the signaling of the green light at the relevant site, and, his thereafter crossing the chowk. However, the afore suggestion stood repelled by her. The effect of the afore suggestion being repelled by PW-4, when combined further with lack of any articulations in Ex.PW4/A that in the afore manner, the husband of the disabled claimant while driving the scooty (Activa) No.HP-20C-7759, being negligent, and, with further factum that the entire report filed before the criminal court of competent jurisdiction, and, constituted under Section 173 of the Cr.P.C., not being, adduced into evidence for therefrom gaugings being made, vis-a-vis, respondent No.2 or the husband of the disabled claimant while driving scooty, occupying the appropriate or inappropriate side of the road, nor, the apposite site plan existing on record, whereas, existence of the afore documentary evidence, is, imperative for concluding whether respondent No.2 or the husband of the disabled claimant was driving the respective vehicle in appropriate or inappropriate site of the road, thereupon, the effect of the afore suggestion being

negated by PW-4, and, further when thereafter the counsel for the insurer concerted to impute tort of negligence, vis-a-vis, husband of the disabled claimant by meteing a suggestion to her that bag of fertilizers was carried on the scooter, and, hence, her husband lost the control over the scooty, and, when the afore suggestion also stood repulsed rather leads to an inference being erected that the insurer has meted to PW-5 imaginative suggestions for exculpating the incriminatory rule of respondent No.2 herein, in causing the relevant collision, and, also strived to impute role of co-tortfeasor, vis-a-vis, the husband of the disabled claimants, dehors the afore best evidence for earmarking the role of co-tortfeasor, vis-a-vis, the husband of the disabled claimant driving the scooty (Activa) No.HP-20C-7759 along with respondent No.2, hence, happening of the collision. Consequently, the findings returned by the learned tribunal upon the apposite issue No.1 not interferable, and, are sustained.

3. The learned counsel appearing for the insurer has also contended that the learned tribunal has inaptly mis-appraised Ex.PW3/A, the apposite disability certificate, inasmuch as, despite no echoings occurring in the apposite column qua 53% disability being permanent, and, it proceeding to conclude that the disabling injuries as pronounced therein being permanent in nature. Even, the afore submission is not acceptable as the learned counsel for the insurer has not heeded to the coulumn No.2, occurring in Ex.PW3/A wherein the disabling injuries as entailed upon the person of the disabled claimant are ticked to be not likely to improve, and, hence, are permanent in nature. Emphasisingly also when since the year 2014, and, upto the date of deposition of PW-3 being recorded, not attempt being made by the insurer, vis-a-vis, the disabling injuries entailed upon the person of the disabled claimant, being re-examined, and, re-assessed by the doctor concerned, and, his opining that the injuries are under recuperation, and, are likely to be improved, and, hence, the afore expression at serial No.2 of Ex.PW3/A losing its relevance and import.

4. The learned tribunal has aptly computed the contribution of the disabled claimant, who is a house wife, being borne in a sum of Rs.5000/- per mensem, towards her estate, and, with the afore permanent disability deterring her to perform the hitherto chores as housemaker, thereupon, it concluded the annual income of the deceased in a sum of Rs.60,000/-, and, also given the permanent disability entailed upon the claimant, hence, hence completely precluding the disabled claimant to perform the chores of housemaker, and, thereon applied the apt multiplier of 14, and, thereafter computed the compensation payable to disabled claimant being borne in a sum of Rs.4,45,200/-. Apart from the above, the learned tribunal has also awarded a sum of Rs.1,77,638/- towards the medical expenses, besides a sum of Rs.50,000/- towards payment charges, and, Rs. 30,000/- towards special diet, a sum of Rs.1,50,000/- towards pain and suffering, and, Rs.1,00,000/- towards "loss of amenities and enjoyment of life", and, Rs.40,000/- towards taxi charges. The afore assessment of compensation, vis-a-vis, the disabled claimants also does not suffering from any illegality.

5. For the foregoing reasons, there is no merit in the instant appeal, and, it is dismissed accordingly. In sequel, the award impugned before this Court is maintained, and, affirmed. All pending applications also stand disposed of. Records be sent back forthwith.