
(2014) 03 SHI CK 0044
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 183 of 2006

New India Assurance Company Limited	APPELLANT
Vs	
Chanchal Devi and Others	RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A 163-A(3) 167 170

Citation : (2014) 03 SHI CK 0044

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

Bench : Single Bench

Advocate : B.M. Chauhan, for the Appellant; Vikas Rathore, Advocate for Respondents Nos. 1 to 3 and Mr. Suneet Goel, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. Challenge in this appeal is to the award dated 21st April, 2006, made by the Motor Accidents Claims Tribunal, Hamirpur, H.P. (hereinafter referred to as "the Tribunal") in MAC Petition No. 19 of 2004, titled as Chanchal Devi and others versus Rakesh Kumar and another, whereby compensation to the tune of Rs. 5,04,000/- along with interest @ 9% per annum from the date of decision of the claim till its realization, came to be awarded in favour of the claimants-respondent 1 to 3 herein, and against the appellant, who has been saddled with the liability to satisfy the awarded amount (for short, the "impugned award"), on the grounds taken in the memo of appeal.

Brief Facts:

The claimants-respondents No. 1 to 3, being the victims of vehicular accident, in which their sole bread-earner, Nirmaljeet Singh, while driving the offending vehicle-Truck No. HP-55-2767 on 14.9.2003, at about 10.00 p.m., which was going from Nichar to Chandigarh, suffered fatal injuries and succumbed to the injuries, invoked jurisdiction of the Tribunal for grant of compensation to the tune

of Rs. 10,00,000/-, as per the break-ups given in the claim petition.

2. Claim petition was resisted and contested by the appellant-insurer and owner-insured. Following issues were framed by the Tribunal on 13.1.2005:

1. Whether Nirmaljeet Singh on 14.9.2003 while driving truck No. HP-55-2767 suffered fatal injuries to which he succumbed due to falling of retaining wall on the road, as alleged?

...OPP

2. If issue No. 1 is proved, whether the petitioners are entitled for compensation, if so, to what amount and from whom?

...OPP

3. Whether the petition is not maintainable?

...OPR-2

4. Relief.

3. Claimants examined Smt. Chanchalo Devi, (PW-1), Shri Vipin Kumar (PW-2), Dr. R.D. Goyal (PW-3) and Shri Surender Kumar (PW-4) in support of their case. Respondent No. 4-owner, Rakesh Kumar appeared in the witness box as RW-1 and made statement. He also examined Shri Yog Raj (RW-3). Respondent No. 2 examined Shri Arun Kapil (RW-2) and Shri Om Chand (RW-4).

4. The Tribunal, after examining the pleadings and scanning the evidence on record, held that claimants-respondents No. 1 to 3 are entitled to compensation to the tune of Rs. 5,04,000/- alongwith interest at the rate of 9% per annum from the date of decision of the petition till its realization and saddled the insurer with the liability.

5. Insured-owner-respondent No. 4 has not questioned the impugned award, thus has attained finality so far it relates to him.

6. The appellant-insurer has questioned the impugned award on the grounds taken in the memo of appeal.

Issue No. 1:

7. The learned Counsel for the appellant argued that the claim petition u/s 163-A of the Motor Vehicles Act, 1988, in short "the Act" was not maintainable on the grounds that the claimants have given the income of their bread earner-driver (deceased) as Rs. 6,000/- per month, thus is not falling in the group of Rs. 14,000/-, as per the second Schedule attached to the Act. He also argued that the amount awarded is at higher side and the appellant is fully justified to question the same for the reason that he, before the Tribunal, had obtained permission/leave in terms of Section 170 of the Act. Both the arguments are not tenable for the reasons, which I will discuss herein.

8. Appellant-insurer has not questioned the impugned award on the other grounds. It is beaten law of the land that hyper-technicalities, mystic maybes, niceties of law and other technical grounds cannot come in the way of the claimants to seek compensation and cannot be an impediment to the Tribunals or Courts to grant compensation to the victims, who are virtually left on streets high and dry.

9. It is the duty of the Tribunals and other institutions to keep in mind what is the object, aim and scope of granting compensation in terms of the provisions of the Act and what is the aim of legislation. It should not be forgotten that it is a social legislation.

10. The Apex Court in a recent judgment in the case titled as Puttamma and others versus Puttamma and Others Vs. K.L. Narayana Reddy and Another, held that the second Schedule contained in the Act has become redundant, unworkable and irrational by efflux of time and has recommended, rather, directed legislators for its amendment. It is act to reproduce paras 53 and 56 of the judgment hereinbelow:

53. In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

54.

55.

56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but failed to do so for 19 years in spite of repeated observations of this court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule Table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of section 163-A of the Act, 1988 or amendment is made by Parliament, we hold and direct that the children up to the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000 (rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs. 1,50,000 (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed u/s 163-A of the Act, 1988.

Thus, in view of the Apex Court judgment, the learned Counsel for the appellant fails.

11. Even otherwise, the arguments of the learned Counsel of the appellant are

misconceived for the reason that the deceased-driver, Nirmaljeet Singh, was driving the offending vehicle-truck, met with an accident and lost his life and thereby, the claimants have become hapless and helpless. The accident was an outcome of the use of motor vehicle and during the course of employment. Thus, the petition was maintainable.

12. The Apex Court in a recent case titled as Mst. Param Pal Singh through father versus Mst. Param Pal Singh through Father Vs. National Insurance Company and Another, , has recorded that a claim is maintainable for grant of compensation, if a driver while driving the vehicle for long distance and thereafter holding the vehicle, taking rest, has lost his life. The Apex Court has further held that the accident is an outcome of the use of motor vehicle and during the course of the employment. It is act to reproduce para 27 of the judgment herein below:

27. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CASUAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

13. The claimants have a legal right to claim compensation in terms of the Workmen's Compensation Act, 1923 because the deceased was driver under employment of the owner-insured and appellant-insurer had to indemnify as per the terms and conditions contained in the Policy and the compensation has to be granted as per the Schedule attached with the said Act. But Section 167 of the Act gives an option to lay a claim petition either before an authority under the Workmen's Compensation Act or before the Tribunal. It is act to reproduce Section 167 of the M.V. Act:

167. Option regarding claims for compensation in certain cases.-- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of

those Acts but not under both.

14. While going through the provisions of law, one comes to an inescapable conclusion that the claimants being the legal representatives of the employee-deceased, have two remedies to claim compensation and in terms of Section 167 of the Act, they can seek compensation at higher side. It is not disputed that they are not legal representatives/claimants of the deceased and the dependants. Thus, the claim petition is maintainable and is rightly granted.

15. The limitations, fetters and other technicalities as provided u/s 163-A of the Act, cannot be a ground for showing door to the claimants, who are the victims of the vehicular accident, otherwise they would be forced to lead a life of destitution and fall prey to other social evils.

16. Now coming to question No. 2, whether the compensation awarded is at higher side? The learned Counsel for the appellant has advanced an argument, which is devoid of any force because in one breath, he has argued that the claim petition was not maintainable; in the second breath, he has stated that the appellant has obtained leave in terms of Section 170 of the Act. The petition was filed u/s 163-A of the Act, which is contained in Chapter XI and Section 170 is contained in Chapter XII.

17. The claimants have specifically averred that income of the deceased was Rs. 18,000/- per month, which was not controverted by the insurer. However, the insurer-respondent No. 4 has filed objections and pleaded that he was paying Rs. 3,000/- per month to the deceased, as monthly wages. The insured has not disputed the factum of income. The Tribunal, after taking the oral as well as documentary evidence in consideration, held that the deceased was earning Rs. 3500/- to Rs. 3800/- per month and after deducting 1/5th share held that the claimants lost source of dependency to the tune of Rs. 3,000/- per month, which is too meager and applied the multiplier of 14, while taking the age of the deceased as 33 years at the relevant time.

18. Keeping in view the judgments made by the Apex Court in cases titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Reshma Kumari and Others Vs. Madan Mohan and Another, the findings are upheld. Viewed thus, the amount awarded is not excessive.

19. It is act to mention herein that the grounds urged and argued by the learned Counsel for the appellant have not been taken as defence by the insurer in the memo of objections before the Tribunal or in the appeal, thus are beyond the pleadings.

20. Keeping in view the discussions made in the petition, the Tribunal has rightly held that deceased Nirmaljeet Singh while driving Truck No. HP-55-2767 on 14.9.2003 suffered fatal injuries and succumbed to the injuries. There is no rebuttal to the evidence led by the owner/respondent No. 4 or insurer-appellant. Thus, evidence led by the claimants has remained unrebutted and findings

returned on issue No. 1 are upheld.

Issue No. 2.

21. The claimants have proved that what was the income of the deceased and to what amount they were entitled to and the Tribunal has awarded them compensation to the tune of Rs. 5,04,000/- and rightly held the dependency to the tune of Rs. 3,000/- per month and has rightly saddled the appellant with the liability and accordingly, the findings returned on Issue No. 2 are upheld.

Issue No. 3.

22. It was the appellant/insurer to prove this issue, but failed to do so. However, as discussed hereinabove, the claim petition is maintainable.

23. Having said so, the appeal is meritless, hence dismissed and the impugned award is upheld. Send down the records after placing copy of the judgment on record.