

(2014) 09 SHI CK 0090

In the High Court Of Himachal Pradesh

Case No : First Appeal from Order No. 216 of 2007 and Cross Objection No. 201 of 2008

New India Assurance Company Limited

APPELLANT

Vs

Kiran Sharma

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 8
Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 3 ShimLC 1580

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

Bench : Single Bench

Advocate : B.M. Chauhan, Advocate for the Appellant; Dinesh Kumar Sharma, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—Challenge in this appeal is to the award, dated 28th March, 2007, made by the Motor Accident Claims Tribunal (Presiding Officer, Fast Track Court), Solan, District Solan, H.P. (hereinafter referred to as "the Tribunal") in Petition No. 3 FTC/2 of 06/05, titled as Smt. Kiran Sharma and others v. Smt. Kamla Devi and others, whereby compensation to the tune of Rs. 19,05,520/- with interest @ 7 1/2% per annum from the date of institution of the petition till its realization came to be awarded in favour of the claimants, as per the apportionment made in the award and against the appellant-insurer (hereinafter referred to as "the impugned award") on the grounds taken in the memo of appeal. The claimants, owner-insured and the driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

2. The appellant-insurer has questioned the impugned award on the grounds that the accident was outcome of contributory negligence and the amount awarded is excessive.

Brief facts:

3. The claimants had invoked the jurisdiction of the Tribunal in terms of the mandate of Section 166 of the Motor Vehicles Acts, 1988 (hereinafter referred to as "the MV Act") for grant of compensation to the tune of Rs. 30,00,000/-, as per the break-ups given in the claim petition.

4. Precisely, the case of the claimants was that Shri Ajit Kumar, their sole bread earner, husband of claimant No. 1 and father of claimants No. 2 and 3, became the victim of motor vehicular accident at the age of 48 years, on 24th July, 2003, near Chamakaripul, Tehsil Arki, District Solan, which was caused by Shri Raj Pal, driver of truck bearing registration No. HP-11-8115, while driving the same rashly and negligently.

5. The claimants have specifically averred in paras 10 and 24 of the claim petition as to how the accident has occurred and who has caused the same. The appellant-insurer has filed reply and has not denied the said factum.

6. It is apt to reproduce para 3 of the reply on merits filed by the appellant-insurer in reply to paras 8 to 10 of the claim petition herein:

"3. That the contents of para 8 to 10 are denied for want of knowledge. Respondents No. 1 and 2 can effectively reply to the contents of these paras. Police of PS Darlaghat has registered false FIR No. 102/03 dated 24.7.2003 against the driver of Truck."

7. It would also be profitable to reproduce para 7 of the reply, which is reply to paras 22 to 24 of the claim petition herein:

"7. That the contents of para 22 to 24 are denied for the want of knowledge. The facts stated in these para are within the special knowledge of the petitioners and they may be put to strict proof of the facts stated in this Para. The rest of the contents are denied for the want of knowledge. Respondents No. 1 and 2 can effectively reply to the contents of this para regarding taking place of accident. The accident has not taken place due to rash and negligent driving of driver of Truck. The manner in which the accident is stated to have taken place is denied."

8. In view of the above, the appellant-insurer has not specifically denied the factum of accident, is an evasive denial and as per the mandate of Order 8 of the Code of Civil Procedure (hereinafter referred to as "the CPC"), it is admission.

9. The owner-insured and the driver of the offending vehicle had not filed any reply. Thus, the averments contained in the claim petition have remained un rebutted so far it relate to them.

10. The following issues came to be framed by the Tribunal on 30th December, 2005:

"1. Whether death of deceased Ajit Kumar has been arisen out of use of motor vehicle and was on account of rash/negligent driving of the truck by respondent No. 2? OPP

2. If issue No. 1 is proved in affirmative, what amount of compensation the petitioners are entitled and from whom? OPP

3. Whether respondent No. 2 did not possess a valid and effective D.L.? OPR-3

4. Whether vehicle was being driven in violation of standard terms and conditions of the Insurance policy? OPR-3

5. Relief."

11. The claimants have examined Shri Shashi Kumar Pandit as PW-1, HHC Babu Ram as PW-2, Shri Surinder Kumar as PW-4, claimant-Kiran Sharma, widow of the deceased, has herself stepped into the witness box as PW-3 and have also placed on record the documentary evidence.

12. It is apt to record herein that neither the owner/insured and the driver nor the appellant-insurer has led any evidence. Thus, the evidence led by the claimants has remained un rebutted.

Issue No. 1;

13. The Tribunal, after scanning the evidence and while taking note of FIR No. 102 of 2003 of Police Station Darlaghat, Ex. P-16, rightly held that the driver of the offending truck, namely Raj Pal, had driven the truck rashly and negligently on the said date and had caused accident, in which deceased-Ajit Kumar lost his life. Thus, the findings returned by the Tribunal on issue No. 1 are upheld.

Issues No. 3 and 4:

14. The appellant-insurer has not led any evidence and has not discharged the onus. The Tribunal has rightly decided both these issues in favour of the claimants, the owner-insured and the driver of the offending vehicle and against the appellant-insurer. Accordingly, the findings returned on issues No. 3 and 4 are upheld.

Issue No. 2:

15. Learned counsel for the appellant-insurer argued that the accident was outcome of the contributory negligence and the Maruti Van was also involved in the accident, has neither pleaded nor led evidence to that effect. Thus, the argument is misconceived.

16. However, it is worthwhile to mention herein, at the cost of repetition, that the appellant-insurer has not taken this ground in the reply, thus cannot now plead and take a ground, which has not been taken by it before the Tribunal. Even otherwise, there is no evidence to this effect, as discussed by the Tribunal while determining issue No. 1 and as upheld hereinabove.

17. Admittedly, the age of the deceased was below 49 years at the time of the accident. The Tribunal has rightly applied the multiplier of "13" in view of the Schedule appended with the MV Act read with the ratio laid down by the Apex

Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , upheld by a larger Bench of the Apex Court in Reshma Kumari and Others Vs. Madan Mohan and Another, .

18. The deceased was Manager of Dhauladhar Public Education Society, his salary was Rs. 17,500/- per month and that is the income taken by the Tribunal. Though, the claimants have pleaded that the deceased was also earning Rs. 25,000/- per annum from agriculture and Rs. 1,00,000/- per annum from other sources, but that was not considered and granted by the Tribunal.

19. I deem it proper to record herein that the claimants are three in number, one fourth was to be deducted towards the personal expenses of the deceased in view of the Apex Court's judgment in Sarla Verma's case (supra) upheld in Reshma Kumari's case (supra), thus, the Tribunal has fallen in error in deducting one third towards the personal expenses of the deceased. Accordingly, it is held that the personal expenses of the deceased were Rs. 4,500/-. The claimants have lost source of dependency to the tune of Rs. 13,000/- per month (Rs. 17500/- - Rs. 4500/-), i.e. $\text{Rs. } 13,000/- \times 12 = \text{Rs. } 1,56,000/-$ per annum. The Tribunal has rightly applied the multiplier of "13". The total loss of income comes to $\text{Rs. } 1,56,000/- \times 13 = \text{Rs. } 20,28,000/-$. The claimants are also entitled to Rs. 2,000/- under the head "funeral expenses", Rs. 5,000/- under the head "loss of consortium" and Rs. 2,500/- under the head "Toss of estate". Viewed thus, the claimants are held entitled to the enhanced compensation to the tune of $\text{Rs. } 20,28,000/- + \text{Rs. } 2,000/- + \text{Rs. } 5,000/- + \text{Rs. } 2,500/- = \text{Rs. } 20,37,500/-$.

20. Having said so, the appeal is dismissed, cross objections are allowed and the impugned judgment is modified, as indicated hereinabove.

21. The appellant-insurer is directed to deposit the enhanced amount of compensation before the Registry within eight weeks. 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. Send down the record after placing copy of the judgment on Tribunal's file.