(2015) 10 SHI CK 0110

In the High Court Of Himachal Pradesh

Case No : FAO Nos. 509 of 2008 and 136 of 2010

New India Assurance Company Ltd. and Others — APPELLANT

Vs

Gayatri Devi and Others — RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:
Penal Code, 1860 (IPC) — Section 304-A, 337

Citation : (2015) 10 SHI CK 0110

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

Bench : Single Bench

Advocate : B.M. Chauhan, Praneet Gupta, J.L. Bhardwaj, Sanjeev Bhushan, Senior Advocate, Pankaj Kumar, Manoj Thakur and Nishant Kumar, Advocates, for the Appellant

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J.

1. Both these appeals are the outcome of one award, dated 31st May, 2008, passed by the Motor Accident Claims Tribunal, Solan, (for short, the Tribunal), in Claim Petition No. 40-S/2 of 2006, titled Gayatri Devi and another v. Pinki Devi and others, whereby compensation to the tune of Rs. 5,36,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till realization, came to be awarded in favour of the claimants and the insurer was saddled with the liability, (for short the impugned award). In addition, Rs. 1,000/- was also awarded as costs. Accordingly, both the appeals are taken up together for final disposal.

2. FAO No. 509 of 2008 has been filed by the insurer challenging the impugned award on the ground that the Tribunal has fallen in error in saddling the insurer with the liability since the driver of the offending vehicle was not having a valid and effective driving licence to drive the offending vehicle. The claimants have laid challenge to the impugned award by filing FAO No. 136 of 2010 on ground of

adequacy of compensation.

3. In order to determine the above questions, brief resume of the facts of the case is required.

4. Claimants pleaded that on 4th April, 2006, driver Tota Ram had driven a Tempo Trax, bearing No. HP-32B-0282, rashly and negligently and collided with the Swaraj Majda and caused the accident, as a result of which the deceased Ganesh Datt, who was driving Swaraj Majda bearing No. HP-14-6535, sustained injuries and succumbed to the same lateron. FIR No. 56 of 2006 was registered at Police Station, Garshankar, under Sections 337 , 304-A IPC. Thus, the claimants, being the widow and the son of deceased Ganesh Datt, filed the Claim Petition claiming compensation to the tune of Rs. 30.00 lacs, as per the break-ups given in the Claim Petition.

5. The claim petition was resisted by the original respondents and on the pleadings of the parties, the Tribunal framed the following issues:

"1. Whether the deceased Ganesh Datt had died on account of rash/negligent driving of the Tempo Trax by the respondent No. 4? OPP

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

3. Whether the accident has been caused on account of rash/negligent driving of Swaraj Mazda by the respondent No. 1? OPR4

4. Whether the deceased driver was not holding valid and effective driving licence at the time of accident, if so its effect? OPR3

5. Whether the vehicle driven by the deceased was without documents, if so its effect? OPR-3

6. Whether the respondent No. 4 did not possess a valid and effective driving licence, if so, its effect?

7. Whether the vehicle driven by the respondent No. 4 was not having any route permit? OPR5

8. Relief."

6. Parties have led their evidence and the Tribunal after examining the evidence came to the conclusion that driver of the Tempo Trax, namely, Tota Ram had driven the said vehicle rashly and negligently and had caused the accident.

7. Feeling aggrieved, the insurer and the claimants have challenged the impugned award, as discussed above.

8. The driver and the owner of the offending vehicle have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to them.

9. Admittedly, the driver of the offending vehicle I.e. Tempo Trax, was competent to drive a light motor vehicle and the vehicle in question was also a light motor vehicle.

10. The learned counsel for the insurer argued that the driver was not having valid and effective driving licence since the driving licence did not bear endorsement to drive the offending vehicle. The argument is devoid of any force for the following reasons.

11. This Court in series of cases i.e. FAO No. 320 of 2008, titled Dalip Kumar and another v. New India Assurance Company Ltd. & another, decided on 6th June, 2014, FAO No. 306 of 2012, titled Prem Singh and others v. Dev Raj and others, decided on 18th July, 2014 and FAO No. 54 of 2012, titled Mahesh Kumar and another v. Smt. Priaro Devi and Others, decided on 25th July, 2014, has discussed the issue and held that the driver having driving licence to drive Light Motor Vehicle is not required to have endorsement of "PSV" i.e. public service vehicle. Further held that Tempo Trax is a Light Motor Vehicle.

12. The Apex Court in latest decision, in Kulwant Singh Vs. Oriental Insurance Company Ltd., , has held that the driver who is having valid and effective driving licence to drive a Light Motor Vehicle is not required to have endorsement to drive a light commercial vehicle. It is apt to reproduce paragraphs No. 10 and 11 hereunder:

"10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive ''light motor vehicle'' could drive ''light motor vehicle'' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed :

"18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No. 1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside."

No contrary view has been brought to our notice.

11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights."

13. Having said so, the argument of the learned counsel for the appellant is turned down and the appeal filed by the appellant-insurer i.e. FAO No. 509 of 2008 is dismissed.

14. Coming to FAO No. 136 of 2010 filed by the claimants for enhancement of compensation, it is clear from a perusal of the impugned award that the Tribunal has fallen in error in assessing just compensation for the following reasons.

15. Admittedly, the age of the deceased at the time of death was 41 years. As per schedule 2 appended with the Motor Vehicles Act, 1988 and as also as per the ratio laid down by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which decision was also upheld by the larger Bench of the Apex Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , multiplier 13 was applicable. Thus, the Tribunal has fallen in error in applying the multiplier 10. Therefore, it is held that multiplier of 13 is just and appropriate in this case.

16. The claimants have specifically pleaded in the claim petition that the deceased was driver by profession and was earning Rs. 4,000/- per month as salary. In addition, he was also getting Rs. 100/- per day as daily allowance. Thus, the total income of the deceased can be said to be not less than Rs. 7,000/- per month. Accordingly, it is held that the income of the deceased is Rs. 7,000/- per month at the time of accident.

17. After deducting 1/3rd amount towards the personal expenses of the deceased, it can safely be held that the claimants lost source of dependency to the tune of Rs. 4667/-, say Rs. 4600/- per month. Thus, the total loss of source of dependency to the claimants is worked out to Rs. 4600 x 12 x 13 = Rs. 7,17,600/-.

18. The Tribunal has awarded Rs. 15,000/- as conventional charges and Rs. 5,000/- under the head ''funeral expenses, which amount is also on the lower side. In view of the recent judgment of the Apex Court, a sum of Rs. 10,000/- each is awarded under the heads ''loss of love and affection'', ''loss of consortium'', ''loss of estate'' and ''funeral expenses''.

19. Thus, a sum of Rs. 7,17,600/- + Rs. 40,000/- = Rs. 7,57,600/- is awarded in favour of the claimants. The enhanced amount of compensation will carry interest at the rate of 7.5% per annum from the date of the impugned award till deposit.

20. The appeal is allowed and the impugned award stands modified, as indicated above.

21. The enhanced amount, alongwith interest, be deposited by the insurer within a period of six weeks from today and on deposit, the amount be released in favour of the claimants strictly in terms of the impugned award.