
(2014) 11 SHI CK 0016
In the High Court Of Himachal Pradesh
Case No : FAO Nos. 182 and 250 of 2007

New India Assurance Company Ltd.

APPELLANT

Vs

Randeep Singh Rana

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2015) 1 ShimLC 408

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

Bench : Single Bench

Advocate : B.M. Chauhan and Tara Singh Chauhan, Advocate for the Appellant;
Neeraj Gupta, Sunita Sharma and M.L. Sharma, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—Challenge in these appeals is to the award, dated 5th March, 2007, passed by the Motor Accident Claims Tribunal, Bilaspur, (for short, the Tribunal), whereby and whereunder compensation to the tune of Rs. 11,94,680/-, with interest at the rate of 7.5% per annum from the date of filing of the Claim Petition till its realization, came to be awarded in favour of the claimant and the insurer was saddled with the liability, (for short, the impugned award).

2. Facts of the case, in brief, are that the Claimant Randeep Singh Rana invoked the jurisdiction of the Tribunal for grant of compensation to the tune of Rs. 25.00 lacs, as per the break-ups given in the claim petition, on the ground that he became victim of a vehicular accident which took place on 22nd April, 2003 at about 1.00 p.m. near village Targhel, District Bilaspur, H.P. It was alleged that on the given day, the claimant was traveling in bus bearing registration No. HP-40-9942 and when the said bus reached at village Targhel, a truck bearing registration No. HP-13-0669 came from opposite direction and struck with the bus, as a result of which the claimant sustained injuries, was taken to Zonal Hospital, Hamirpur and his arm was amputated, hence the Claim Petition filed by the claimant.

3. The respondents filed replies to the claim petition and resisted the same on various grounds.

4. On the pleadings of the parties, the following issues were settled by the Tribunal:

"1. Whether the accident took place due to the rash or negligent driving of respondents No. 2 and 5, as alleged? OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioner is entitled to and from which of the respondents? OPP

3. Whether the respondents No. 2 and 5 were not having valid and effective driving license, as alleged, if so its effect? OPR-3&6

4. Whether the truck in question was insured, as alleged? OPR-4

5. Relief."

5. In order to prove his case, the claimant examined four witnesses, while the respondents examined seven witnesses in all.

6. The Tribunal, after scanning the entire evidence and the record, held that the accident in question was not the outcome of contributory negligence of the drivers of the bus and the truck, but the accident occurred only due to the rash and negligent driving of the bus driver. Accordingly, the Tribunal saddled the owner of the bus with the liability and directed the insurer to indemnify. The owner and the driver of the truck stand exonerated by the Tribunal.

7. The insurer of the bus, feeling aggrieved, has questioned the impugned award on the ground that the accident was the outcome of contributory negligence and the Tribunal has fallen in error in holding that the accident had occurred only due to the negligence of the bus driver.

8. The claimant has questioned the impugned award on the ground of adequacy of compensation.

9. The owner and the driver of the offending bus have not questioned the impugned award on any count, thus the same has attained finality insofar as it relates to them.

10. The question to be determined in FAO No. 250 of 2007, (appeal of the claimant), is - whether the amount awarded by the Tribunal is inadequate?

11. I have gone through the impugned award. The entire income of the claimant/injured has been taken into consideration while granting the compensation. Despite the fact that the claimant was injured, is still in service and receiving the salary. However, it is also the fact that due to the aforesaid accident, the injured/claimant suffered permanent disability, which has rendered his life miserable, has lost marriage prospects, charm and amenities of life and even his physical frame was also shattered. Thus, the Tribunal has held the claimant entitled to the sum

of Rs. 11,94,680/- under various heads as under:

12. While calculating the compensation, the Tribunal has rightly made observations in paragraphs 32 to 40 and no fault can be found with the said findings recorded by the Tribunal.

13. Having said so, the amount cannot be said to be inadequate, is rather just and appropriate. Accordingly, the appeal filed by the claimant merits to be dismissed and the same is dismissed as such.

14. Coming to FAO No. 182 of 2007, the learned counsel for the appellant/insurer has argued that the Tribunal has fallen in error in fastening the liability upon the appellant solely, while the accident was the outcome of contributory negligence of both the offending vehicles. The argument is devoid of any force for the following reasons.

15. The Tribunal has recorded reasons in paragraph 18 of the impugned award for holding that the accident was the outcome of rash and negligent driving of the bus driver. The said finding recorded by the Tribunal has neither been questioned by the owner of the bus nor by the driver. Therefore, it does not lie in the mouth of the insurer to claim that the accident was not the outcome of rash and negligent driving of the bus driver, but was the outcome of contributory negligence. It is apt to reproduce paragraph 18 of the impugned award hereunder:

"18. In clear and unequivocal terms, PW-2 has admitted that the truck was stopped and was stationary on the left side of the road at the place of accident and after seeing the deep gorge, he negotiated the vehicle towards his side. He has also admitted that he has negotiated the same to its extent. Though he has denied that after causing the accident, he stopped the vehicle after 100 Mts. away, but volunteered the same was stopped at about 20 yards. He has denied that he could not apply the brakes, as such, caused the accident."

16. The claimant in paragraph 24 of the Claim Petition has pleaded that the driver of the truck came from opposite side in a very high speed and struck with the bus. However, the claimant, while appearing in the witness box as PW-1, has specifically stated that the accident occurred due to the rash and negligent driving of both the drivers.

17. The owner and the driver of the bus, (respondents No. 1 and 2 before the Tribunal), have filed joint reply and denied their liability, and pleaded that the accident was the outcome of rash and negligent driving of the truck driver. The owner and the driver of the truck have also filed separate replies and pleaded that the truck was stationary and was not being driven at the relevant point of time.

18. I have also gone through the statement of the driver of the bus, who appeared in the witness box as RW-2 (wrongly recorded as PW-2 in paragraph 18 supra). He has admitted in his cross examination that the truck was stationary at

the time of accident. It was also admitted by this witness that he stopped the bus at a distance of 20 meters after it was hit with the truck. Thus, the question of contributory negligence does not arise.

19. Having said so, the Tribunal has rightly held that the bus driver had driven the offending bus rashly and negligently and caused the accident. Therefore, the liability to indemnify was rightly fastened on the insurer/appellant.

20. It may be placed on record that the challan was presented against the truck driver, which too, has resulted in his acquittal.

21. As a consequence of the above discussion, the appeal filed by the insurer i.e. FAO No. 182 of 2007 merits to be dismissed and the same is dismissed as such.

22. Both the appeals are dismissed accordingly.