
(2013) 07 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : FAO No. 180 of 2008

New India Assurance Company Ltd.

APPELLANT

Vs

Surekha and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 2 ACC 47

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Claimant Surekha on her behalf as also her minor daughter Ms. Prinka and father-in-law Punnu Ram, filed a petition under the provisions of Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), seeking compensation, as a result of death of her husband Dev Raj. On 29.4.2004, deceased Dev Raj was hit by a vehicle No. HP-38-6630, owned by Nand Lal and Company (respondent No. 4 herein) driven by Arjun Singh (respondent No. 5 herein). Notice in the petition was issued. In reply, the insurer, who has filed the present appeal, raised several objections. Owner of the vehicle admitted occurrence of the accident.

2. Based on the pleadings of the parties, the Tribunal framed the following issues:

1. Whether on 29.4.2004 at about 6 p.m. at By-pass, Pathankot, Shri Dev Raj husband of petitioner No. 1, father of petitioner No. 2 and son of petitioner No. 3 died in vehicular mishap of vehicle No. HF-38-6630 (Tanker) as alleged? --OPP

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

2. Whether the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident, as alleged? --OPR-3

3. Whether the offending vehicle was being plied in contravention of the

provisions of the Motor Vehicles Act and terms and conditions of the insurance policy, as alleged? --OPR.3

4. Relief.

3. Issue No. 1 stands decided in favour of the claimants, whereas issue Nos. 3 and 4 were decided against the objectors. Deciding issue No. 2, the Tribunal awarded a sum of Rs. 4,17,500 in favour of the claimants, holding that since the vehicle was insured, the insurer is liable to pay the same.

4. Income of the deceased was assessed at Rs. 3,000 per month. However, for the purposes of determination of compensation, the same was taken as Rs. 2,000 per month and by applying a multiplier of 17, a sum of Rs. 4,08,000 was determined as compensation. In addition, Rs. 2,000 as expenses towards funeral; Rs. 5,000 towards loss of consortium; and Rs. 2,500 towards loss of estate, stand awarded.

5. The claimants, the owner as also the driver, have accepted the award. The insurer has preferred the present appeal, assailing the same.

6. Learned Counsel for the appellant, Mr. Praneet Gupta, has vehemently argued that the Tribunal erred in concluding that the deceased died as a result of the accident, in which the vehicle in question was involved. He has referred to and relied upon the ratio of law laid down in *State of M.P. and Others v. Manubai and Others*, I (2007) ACC 205 : 2007 (2) TAC 339 (M.P.); and *United India Insurance Co. Ltd. v. Kashmiri & Others*, I (2007) ACC 559 : 2007 (3) TAC 140 (P&H), to contend that in the absence of proof of accident, claim petition under the provisions of Section 163A of the Act was not maintainable.

7. Ratio of law laid down in the aforesaid decisions is totally inapplicable to the given facts. Claimants have tendered in evidence post-mortem report of the deceased, FIR as also other documents to show that the vehicle in question was involved in the accident. However, these documents cannot be looked into as they were not exhibited in accordance with law.

8. Be that as it may, claimant No. 1 Surekha, who stepped into the witness box, has unequivocally deposed that her husband, who was working as a cleaner, was hit with vehicle No. HP-38-6630, as a result of which he died. There is no suggestion of denial put to this witness by the insurer. On the contrary, it is suggested that the accident did not occur on account of negligence of the driver, namely Arjun Singh. In my considered view, her testimony inspires confidence and is believable. Testimony of Dr. Man Singh (PW-2), who conducted post-mortem, is also to similar effect.

9. Hence, it cannot be said that the Tribunal erred in deciding the issue with regard to the deceased having died as a result of the accident in which the vehicle in question was involved.

10. In fact in *Kashmiri (supra)*, the Court was dealing with a case where there

was evidence to the contrary, establishing the fact that death did not take place as a result of the accident, but on account of consumption of alcohol.

11. In *Manubai* (supra), the Court simply held that all that is required to be proved by the claimant is that the accident occurred with the motor vehicle, which resulted into injury/death and if these ingredients stood established then proof of negligence becomes irrelevant.

12. It is next urged that compensation is on the higher side. The submission only merits rejection. Deceased was a young man of 23 years. His income is assessed just at Rs. 2,000 per month. The formula applied is totally in consonance with the provisions of law. Hence, it cannot be said that the compensation is on the higher side. For all the aforesaid reasons, present appeal is dismissed. Appeal stands disposed of, so also the pending application(s), if any.