
(2016) 03 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : FAO No.10 of 2010

Oriental Insurance Co.

APPELLANT

Vs

Bholi and Ors.

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166, 173

Citation : (2016) AAC 1103 : (2016) 2 HimLR 1166 : (2016) ILRHP 389

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

Bench : Single Bench

Advocate : Rakesh Thakur, Advocate, Parveen Chandel, Advocate, Court Guardian, for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J. (Oral) - Subject matter of this appeal is the award, dated 13th April, 2009, passed by the Motor Accident Claims Tribunal-II, Solan, H.P., (for short, the Tribunal), in Claim Petition No.14-NL/2 of 2006, titled Bholi and others v. Inderjit Singh and another, whereby compensation to the tune of Rs. 8,20,400/- with interest at the rate of 12% per annum from the date of filing of the claim petition till realisation, came to be awarded in favour of the claimants and the insurer was saddled with the liability, (for short, the impugned award).

2. The claimants and the owner/driver have not questioned the impugned award on any count, therefore, the same has attained finality so far as it relates to them.

3. Feeling aggrieved, the insurer has challenged the impugned award by the medium of instant appeal, on the ground that initially it was averred in the claim petition that the vehicle involved in the accident was HP-12-1572, but later on the claimants pleaded and proved that the vehicle, which hit the scooter of the deceased, was Mahindra Jeep bearing No. HR-68-1572. Thus, the learned

counsel for the appellant/insurer submitted that the offending vehicle has been falsely implicated in the accident.

4. The argument, though attractive, is devoid of any force for the simple reason that the claimants had clarified that earlier, by mistake, the number of the offending vehicle was recorded as HP-12-1572, instead of HR-68-1572. The factum that vehicle bearing No. HR-68-1572 was involved in the accident has been proved by the claimants by leading oral as well as documentary evidence. Even, in regard to the accident, the FIR was lodged against the driver of the offending vehicle (HR-68-1572). After investigation, the police had also filed the charge sheet against the driver of the offending vehicle (HR-68-1572) before the Court of Additional Chief Judicial Magistrate, Panchkula.

5. Thus, there is clinching evidence that the accident was caused by the driver, namely, Inderjit Singh, who, at the relevant point of time, had driven the offending vehicle (HR-68-1572) rashly and negligently. The Tribunal has rightly concluded that the accident had taken place on account of rash and negligent driving of the offending vehicle bearing No. HR-68-1572 by its driver Inderjit Singh. Accordingly, the argument advanced by the learned counsel for the appellant is repelled being without any force and the findings recorded by the Tribunal on issue No.1 are upheld.

6. Learned counsel for the appellant further argued that the amount of compensation awarded by the Tribunal is excessive.

7. The Tribunal in paragraph 8 of the impugned award has categorically held, on the basis of the oral as well as documentary evidence produced by the claimants in that behalf, that the monthly income of the deceased was Rs. 5524/-. After deducting 3rd amount towards the personal expenses of the deceased, the Tribunal has rightly held that the claimants have lost source of dependency to the tune of Rs. 3,682/-, or say, Rs. 3700/- per month.

8. Admittedly, the age of the deceased at the time of accidental death was 39 years. Therefore, keeping in view the age of the deceased, I am of the opinion that the Tribunal has fallen in error in applying the multiplier of 16, rather multiplier of 15 was applicable. Accordingly, the multiplier of 15 is applied.

9. In view of the above, the claimants are held entitled to a sum of Rs. 3700 x 15 x 12 = Rs. 6,66,000/- under the head "loss of source of dependency".

10. In addition to above, the Tribunal has rightly awarded Rs. 5,000/- under the head "medical expenses", but has fallen in error in awarding Rs. 5,000/- under the head "funeral expenses", Rs. 50,000/- each under the heads "loss of consortium" and "love and affection". The Tribunal has also wrongly not awarded any compensation under the head "loss of estate". Accordingly, the claimants are held entitled to Rs. 10,000/- each under the heads "funeral expenses", "loss of consortium", "loss of love and affection" and "loss of estate".

11. Having said so, the Claimants are held entitled to a sum of Rs. 7,11,000/-,

under the different heads, as under:

(i)

Loss of source of dependency -

Rs. 6,66,000/-

(ii)

Medical expenses -

Rs. 5,000/-

(iii)

Funeral expenses -

Rs. 10,000/-

(iv)

Loss of consortium -

Rs. 10,000/-

(v)

Loss of love and affection -

Rs. 10,000/-

(vi)

Loss of estate -

Rs. 10,000/-

Total

Rs. 7,11,000/-

12. As far as interest is concerned, the Tribunal has awarded the interest at the rate of 12% per annum, which, appears to be on the higher side. Accordingly, the rate of interest is reduced to 7.5% per annum and it is held that the amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of the Claim Petition till realisation.

13. Apart from the above, the claimants are also held entitled to Rs. 5,000/- as litigation costs, as awarded by the Tribunal.

14. In view of the above discussion, the appeal is allowed and the impugned award is modified to the extent as indicated above.

15. The Registry is directed to release the amount in favour of the claimants strictly in terms of the impugned award and the excess amount, if any, along

with interest, be refunded to the insurer through payee's account cheque.