

(2015) 09 SHI CK 0078

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No. 352 of 2008, FAOs & C.O. No. 125 of 2011, FAO Nos. 511 and 362 of 2008

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mahtaba and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Citation : (2015) 09 SHI CK 0078

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

Bench : Single Bench

Advocate : G.C. Gupta, Senior Advocate and Meera Devi, for the Appellant; D.S. Nainta, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mansoor Ahmad Mir, C.J—All these appeals are outcome of a common accident and the vehicle involved is also the same hence taken up together for disposal.

2. The claimants being the victims of a vehicular accident filed claim petitions before the Tribunal for the grant of compensation, as per the break-ups given in the claim petitions, on the ground that the driver, namely, Mr. Baby son of Sh. Attar Singh, has driven the offending vehicle, i.e. Maxi Cab bearing registration No. HP-01A-3184 at Sawara Kainchi rashly and negligently and caused the accident.

3. The claim petitions were resisted and contested by the respondents and following issues were framed in FAO No. 352 of 2008.

"1. Whether on 15.8.2004 at about 12:00 PM at Parhat pul respondent No. 3 was driving maxi cab No. HP-01A-3184 rashly and negligently and as such caused death of Sanaulla War? OPP.

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

3. Whether the driver of maxi cab No. HP-01A-3184 was not having any valid driving licence at the time of accident? OPR.

4. Relief."

4. In FAO No. 511 of 2008, following issues were framed:

"1. Whether on 15.8.2004 at Parhat the respondent No. 4 was driving maxi cab No. HP-01A-3184 rashly and negligently and as such caused death of Shri Rajeev Kumar War? OPP.

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

3. Whether the driver was not holding valid driving licence at the time of accident? OPR.

4. Relief."

5. In FAO No. 362 of 2008 the Tribunal framed the following issues:

"1. Whether on 15.8.2004 at about 12.00.00 PM at Parhat Pul the respondent No. 1 was driving maxi cab No. HP-01A-3184 rashly and negligently and as such caused death of Shri Balak Ram? OPP.

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

3. Whether the driver of maxi cab No. HP-01A-3184 was not having any valid driving licence at the time of accident? OPR.

4. Relief."

6. The Tribunal, in FAO No. 352 of 2008, arising out of impugned award dated 21.6.2008, titled Mst. Mahtaba and others versus Mr. Baby and others made by the Motor Accident Claims Tribunal (II), Shimla, Camp at Rohru in MAC Petition No. 114-R/2 of 2004 has awarded compensation to the tune of Rs. 6,11,000/- alongwith interest @ 7.5% per annum, in FAO NO.511 of 2008, arising out of the award dated 18.7.2008 passed in MAC Petition No. 8-R/2 of 2005 titled Smt. Subhadra and another versus Kumari Nisha and others has awarded compensation to the tune of Rs. 4,61,200 alongwith interest @ 7.5% per annum and in FAO No. 362 of 2008, arising out the award dated 21.6.2008 in MAC petition No. 1-R/2 of 2005 titled Smt. Meghu Devi and others versus Mr. Baby and others has awarded compensation to the tune of Rs. 1,45,000/- along with interest @ 7.5% per annum.

7. It is stated at the Bar by the learned counsel for the parties that the batch of appeals, arising out of the same accident have already been decided by this Court on 15.10.2011 in FAO NO. 423 of 2006 titled Oriental Insurance Company Ltd. Versu Sagura Begam and others alongwith other connected matters and the appeals of the insurance company have been dismissed.

8. The claimants, owners and drivers have not questioned the impugned awards on any grounds, thus the same have attained finality so far they relate to them.

9. The insurer has questioned the impugned awards on two grounds (i) that the owner has committed willful breach, (ii) that the amount awarded is not in accordance with 2nd Schedule of the Motor Vehicles Act read with Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 and upheld in Reshma Kumari and Others Vs. Madan Mohan and Another, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 .

10. The learned counsel for the appellants frankly conceded that the first point is covered by the judgment delivered by this Court in batch of appeals lead case of which is FAO No. 423 of 2006, referred to supra.

11. I have gone through the judgment referred to supra in FAO No. 423 of 2006. It has attained finality. Thus, the first point is governed by the said judgment.

12. Second Point. In FAO No. 362 of 2008, the amount awarded is too meager and cannot be said to be excessive in any way. Accordingly the impugned award in FAO No. 362 of 2008 is upheld.

13. The Tribunal has fallen in an error in assessing the compensation and applying the multiplier while making the award impugned in FAO No. 352 of 2008. The Tribunal has applied the multiplier of "16" whereas multiplier of "14" was applicable, as per the law applicable. Thus, the claimants are entitled to Rs. $3000 \times 12 \times 14 =$ Rs. 5,40,000/- plus Rs. 15,000/- awarded by the Tribunal on account of collecting the dead body, total to the tune of Rs. 5,55,000/-.

14. Adverting to FAO No. 511 of 2008. The deceased was bachelor aged 16 years at the time of death. The claimants are the parents of the deceased. The apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 and upheld in Reshma Kumari and Others Vs. Madan Mohan and Another, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 , has held that one half has to be deducted towards the personal expenses and 1/3rd has to be deducted towards loss of dependency. The Tribunal has assessed the income of the deceased to the tune of Rs. 4000/- which has not been disputed by any of the parties. Thus, the findings returned have attained finality. Now by taking the income of the deceased as Rs. 4000/- per month and deducting one half the income of the deceased is to be assessed at Rs. 2000/- per month and the multiplier applicable is 14 instead of "16". The claimants are

entitled to Rs. 2000 x 12 x 14, i.e. Rs. 3,36,000/- plus Rs. 30,000 and Rs. 10,000, as awarded by the Tribunal in para 17 of the impugned award. Thus, the claimants, in all are entitled to Rs. Rs. 3,36,000+ Rs. 40,000= Rs. 3,76,000/-.

15. Accordingly, the impugned awards in FAO No. 511 of 2008 and FAO 352 of 2008 are modified as indicated hereinabove.

16. The Cross objections No. 125 of 2011 filed in FAO No. 352 of 2008 are dismissed.

17. The Registry is directed to release the amount in favour of the claimants, strictly, in terms of the conditions contained in the impugned award, through payee's cheque account and excess amount if any, shall be refunded to the insurer, through payee's account cheque.

18. All the appeals stand disposed of accordingly.

19. Send down the record, forthwith, after placing a copy of this judgment.