

(2014) 01 SHI CK 0042
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 434 of 2006

Oriental Insurance Company Limited	Vs	APPELLANT
Ganga Dei and Others		RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 01 SHI CK 0042

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

Bench : Single Bench

Advocate : Lalit K. Sharma, Advocates for the Appellant; Ramakant Sharma, Advocates for the Respondent

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. This appeal is directed against the award and order, dated 15.9.2006, passed by Motor Accident Claims Tribunal, Fast Track Court, Solan, H.P., in Claim Petition No. 16FTC/2 of 05/2006, titled as Ganga Dei and another versus Chandan P. Bothra and others, whereby and whereunder compensation to the tune of Rs. 9.00 lacs with interest at the rate of 7.5% per annum was granted in favour of the claimants and the appellant was saddled with the liability, (for short, the impugned award).

Brief facts:

2. Respondent/driver, namely, Shri Sheesh Ram Vikey had driven the vehicle bearing registration No. MH-31-M-5647 rashly and negligently on 15th December, 2004 near Nag Mandir, Khairi Road, Kamthi, District Nagpur and hit the deceased, namely, Naval Kishore, who sustained injuries in the said accident and succumbed to them. The deceased was an engineer by profession and was of the age of 24 years at the time of accident. Claimants, being the victims of the said accident, have filed the claim petition for grant of compensation to the tune of Rs. 30.00 lacs, as per the break-ups, given in the Claim Petition. The insurer/appellant questioned the impugned award by way of filing the present appeal.

3. Owner and driver have not filed any objections to the claim petition. Only the insurer filed objections. On the pleadings of the parties, the following issues were framed by the Tribunal:

"1. Whether the death of the deceased Naval Kishore had arisen out of the use of motor vehicle on account of the accident caused by driver of the vehicle No. MH-31-M-5647 driven by respondent No. 2? 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 respondent No. 2 did not possess a valid and effective driving license at the time of accident and was he competent to obtain the same? OPR-3

4. Whether the vehicle was being driven in violation of the standard terms and conditions of the Insurance Policy? OPR-3

5. Whether the accident had taken place due to rash/negligent driving of the Motor Cycle by the deceased? OPR-3.

6. Whether there is a collusion between the petitioners and the respondents No. 1 and 2, if so its effect? OPR-3.

7. Relief."

4. The claimants examined their witnesses. However, the insurer-appellant opted not to lead any evidence. Thus, the evidence led by the claimants remained un-rebutted.

5. Appellant-insurer has questioned the impugned award on the ground of adequacy of compensation. Thus, the impugned award has attained finality so far as it relates to Issues No. 1, 3, 4, 5 and 6 and the findings recorded on these issues by the Tribunal are upheld.

6. The only question left to be determined is - whether the compensation awarded is just or excessive?

7. Admittedly, the deceased was in service and claimants have placed on record the pay slip i.e. Ext. P-3, which would disclose that the last pay drawn by the deceased was Rs. 7,500/- per month. In terms of the mandate in the case titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , upheld by the larger Bench of the Apex Court in case titled as Ramesh Kumari and others v. Madan Mohan and another, 2013 AIR (SCW) 3120, 1/2 of the income was to be deducted and the claimants-parents were entitled to only 1/2 of the same. But the Tribunal has fallen in error in deducting only 1/3rd of the income as personal expenses and in holding that the claimants have lost source of dependency to the tune of 2/3rd. It appears that the Tribunal has not taken into consideration the pay revision and future prospects of the deceased.

8. However, keeping all the factors in view read with the fact that the insurer has not led any evidence, I deem it proper to hold that the loss of source of

dependency is to the tune of Rs. 4,000/- per month in lump sum and as per the judgment in Sarla Verma's case (supra) read with Schedule appended with the Motor Vehicles Act, the multiplier applicable is 11. Thus, the Tribunal has fallen in error in applying multiplier of 13. The Tribunal has rightly awarded Rs. 20,000/- and Rs. 1.00 lac under other heads.

9. I also deem it proper to enhance the rate of interest from 7.5% to 9% per annum in order to secure the ends of justice.

10. Having said so, it is held that the claimants are entitled to Rs. 5,28,000/- (Rs. 4000 x 12 x 11) plus Rs. 20,000/- under the head loss of love and affection and Rs. 1,00,000/- under the head tickets, with interest at the rate of 9% per annum, from the date of claim petition i.e. 21st March, 2005 till its final realization.

11. Accordingly, the impugned award is modified and the appeal is allowed. At this stage, the learned counsel for the appellant states that the award amount has already been deposited with the Registry of this Court. Registry is directed to release the awarded amount in favour of the claimants strictly in terms of this order read with the impugned award and excess amount, if any, deposited by the appellant be released in its favour, through account payees cheque.

12. Appeal is disposed of alongwith pending applications, if any.