

(2016) 09 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : FAO No. 335 of 2011.

Oriental Insurance Company Ltd. - Appellant @HASH Smt. Pushpa and Others

Date of Decision : 02-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 2191 : (2016) 4 ACC 519 : (2016) 4 HimLR 2588 : (2017) 1 TAC 514

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Lalit K. Sharma, Advocate, for the Appellant (in FAO No. 376 of 2011); Mr. Virender Sharma, Advocate, for the Respondent Nos. 1 and 2 (in FAO No. 335 of 2011 and 376 of 2011); Mr. Inderjit Singh Narwal, Advocate, for the Respondents Nos. 3 and 4 (in F

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, CJ.(Oral) - These appeals are directed against the judgment and award dated 22.7.2011, made by the Motor Accident Claims Tribunal, Shimla, H.P. in MAC Petition No. 50-S/2 of 2008, titled Smt. Pushpa Devi and another v. Sh. Varinder Narwal and others, for short "the Tribunal", whereby compensation to the tune of Rs. 5,76,000/- alongwith interest @ 8% and costs of Rs. 3,000/- came to be awarded in favour of the claimants and insurer was saddled with the liability, hereinafter referred to as "the impugned award", for short.

2. Both these appeals are outcome of the common impugned award, thus, I deem it proper to determine both these appeals by this common judgment.

3. The insurer, by the medium of FAO No.335 of 2011 has questioned the impugned award, so far it relates to saddling it with the liability.

4. The claimants, by the medium of FAO No. 376/2011, have questioned the impugned award on the ground of adequacy of the compensation.

5. Owner and driver have not questioned the impugned award on any ground, has attained the finality so far as it relates to them.

6. The claimants being the victims of a vehicular accident had filed claim petition before the Tribunal for the grant of compensation to the tune of Rs. 20,00,000/-, as per the break-ups given in the claim petition, on account of death of Shri. Parkash Chand in the said accident, caused by respondent No. 2, namely Ajay Thakur, on 11.10.2008 while driving Swaraj Mazda Truck No. HP-51-B-0921, in a rash and negligent manner in the area of Majnoo Mod at about 3:40 P.M., in which deceased sustained the injuries and succumbed to the same.

7. The claim petition was resisted by the respondents and following issues came to be framed by the Tribunal.

(i) Whether Sh. Parkash Chand died due to rash and negligent driving of truck Swaraj Mazda No. HP-51-B- 0921 by respondent No.2? OPP.

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

(iii) Whether the petition is not maintainable OPR-3.

(iv) Whether the vehicle in question was being driven in contravention of the terms and conditions of the insurance policy and the provisions of Motor Vehicles Act, 1988? OPR-3.

(v) Whether Sh. Parkash Chand was travelling as unauthorized and gratuitous passenger in the truck in question at the time of accident? OPR-3.

(vi) Whether the respondent No. 2 was not holding valid and effective driving licence to drive the vehicle in question at the time of accident? OPR-3.

(vii) Relief.

8. Claimants have examined six witnesses, namely, Ram Krishan (PW1), Bhagwan Dutt, LHC (PW2), Dr. Piyush Kapila (PW3), Pardeep Sharma, (PW4), Thakur Dass as (PW6) and claimant No. 1 Pushpa Devi also stepped into the witness-box as PW5.

9. Respondent-insurer examined RW1 Khem Chand, RW2 N.K. Hazari, RW3 Pritam Chandel and RW6, S.I. Anil Kumar.

10. Virender Pal Narwal owner of Truck and Ajay Kumar driver also stepped into the witness-box as RW 4 and RW5 respectively.

11. Parties have placed on record the documents, details of which have been given in FormB, appended to the impugned award.

12. This Court is hearing the first appeal in terms of the mandate of Section 173 of the Motor Vehicles Act, for short "the Act" and is having the same powers alike Section 96 of the Code of Civil Procedure for short "CPC" and even otherwise,

this Court has to exercise powers in terms of the mandate of Section 173 of the Act read with the provisions of the CPC.

13. The same principles of law have been laid down by the Apex Court in the case titled as U.P.S.R.T.C. v. Km. Mamta and others, reported in AIR 2016 Supreme Court 948. It is apt to reproduce para 24 of the judgment herein:

"24. An appeal under Section 173 of the M.V. act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. (See National Insurance Company Ltd. v. Naresh Kumar & Ors., ((2000) 10 SCC 198 and State of Punjab & Anr. v. Navdeep Kuur & Ors. (2004) 13 SCC 680)"

14. Keeping in view the purpose of granting compensation read with the discussion made hereinabove, I deem it proper to determine all issues.

15. The claimants have examined the witnesses who stated that the deceased Parkash Chand was walking on the left side of the highway at Majnoo Mod at about 3:40 P.M., was hit by the offending vehicle which was being driven by respondent No.2, namely, Vijay Thakur, rashly and negligently.

16. PW4, namely, Pardeep Sharma, is the only eye witness, has stated that he was on his way to his house on the fateful day. The offending vehicle which was being driven by respondent No. 2 rashly and negligently, hit deceased Parkash Chand, who was walking on the left side of the highway. The driver managed to escape from the spot, has immediately informed the claimants about the death of Parkash Chand.

17. Learned counsel for the owner, driver and insurer have cross-examined this witness at length but have failed to demolish/shatter his statement.

18. The standard of proof in civil and criminal cases is totally different. While determining the criminal case and recording conviction, the prosecution has to prove the case beyond reasonable doubt for the reason that the accused is presumed to be innocent till the guilt is brought home. In civil cases, the parties have to prove their cases by preponderance of probabilities. In summary cases like granting of compensation, in terms of the mandate of Section 166, Chapter XII of the Act, summary procedure has to be adopted, without succumbing to the niceties and technicalities of procedure. It is beaten law of the land that technicalities or procedural wrangles and tangles have no role to play.

19. My this view is fortified by the judgment delivered by the apex court in Dulcina Fernandes and others v. Joaquim Xavier Cruz and another, reported in (2013) 10 SCC 646, N.K.V. Bros. (P.) Ltd. v. M. Karumai Ammal and others etc., reported in AIR 1980 Supreme Court 1354 and Oriental Insurance Co. v. Mst. Zarifa and others, reported in AIR 1995 Jammu and Kashmir 81.

20. This Court has also laid down the similar principles of law in FAO No. 692 of

2008 decided on 4.9.2015 titled Cholamandlan MS General Insurance Co. Ltd. v. Smt. Jamna Devi and others, FAO No. 287 of 2014 along with connected matter, decided on 18.9.2015 titled Tulsi Ram v. Smt. Beena Devi and others, FAO No. 72 of 2008 along with connected matter decided on 10.7.2015 titled Anil Kumar v. Nitim Kumar and others and FAO No. 174 of 2013 decided on 5.9.2014 titled Kusum Kumari v. M.D. U.P Roadways and others.

21. Having said so, the claimants have pleaded in the claim petition what was the cause of the accident and how the deceased had died. They have led evidence and have proved that deceased Parkash Chand died in a vehicular accident caused by respondent No. 2, while driving the offending vehicle rashly and negligently.

22. Viewed thus, it is held that the claimants have proved that respondent No. 2 had driven the offending vehicle rashly and negligently, hit the deceased, who sustained the injuries and succumbed to the injuries. Accordingly, issue No. 1 is decided in favour of the claimants and against the respondents.

23. Before I deal with issue No. 2, I deem it proper to determine issues No. 3 to 6.

24. It was for the insurer-respondent No. 3 in claim petition and appellant in FAO No. 335 of 2011 to discharge the onus, has failed to discharge the same. All issues have been decided against the insurerrespondent No. 3-appellant. Even learned counsel for the appellant has not advanced any argument viz-a-viz issues No. 3 and 6. Thus, the findings returned on issues No. 3 and 6 are upheld.

25. Learned counsel for the insurer-appellant argued that the insured/owner has committed willful breach of the terms and conditions of the insurance policy read with the mandate of Sections 147 and 149 of the Act and deceased was a gratuitous passenger. It was for the insurer to plead and prove that the owner had committed willful breach, has not led any evidence to show that owner had committed any willful breach, except trying to prove that the deceased was a gratuitous passenger, has failed to do so.

26. At the cost of repetition PW4 Pardeep Sharma, eye witness has specifically stated that the deceased was walking on the left side of the highway, in the given circumstances, the insurer has failed to discharge the onus. The findings returned on issues No. 4 and 5 are also upheld.

Issue No.2.

27. The factum of insurance is not in dispute. The Tribunal has rightly held that the vehicle was insured and saddled the insurer with the liability.

28. By the medium of FAO No. 376 of 2011, the claimants have disputed the adequacy of compensation. The deceased was working in Road and Buildings Department of Municipal Corporation and his monthly salary was Rs. 9490/- as per salary certificate Ext. PW1/A. He was husband of claimant No. 1 and father of

claimant No. 2. Claimant No. 1 Pushpa Devi has lost matrimonial life and source of dependency and claimant No. 2 has lost father, love and affection of father in addition to loss of source of dependency. The deceased was drawing salary of Rs. 9490/- per month, roughly Rs. 9000/-. 3rd was to be deducted towards his personal expenses, in view 2nd Schedule Act, read with the ratio laid down in Sarla Verma and others v. Delhi Transport Corporation and another reported in AIR 2009 SC 3104 and upheld in Reshma Kumari and others v. Madan Mohan and another, reported in 2013 AIR SCW 3120. Thus, it is held that the claimants have lost source of dependency to the tune of Rs. 6000/- per month. The claimants have proved that the deceased was 40 years of age at the time of accident and the Tribunal has also held that the deceased was 40 years of age at the time of accident and applied the multiplier of "12", is just and appropriate multiplier applicable.

29. Having said so, it is held that the claimants have lost the source of dependency to the tune of Rs. 6000 x 12 x 12 = Rs. 8,64,000/-. The claimants are also entitled to compensation under the four heads as under:

(i)

Loss of love and affection

:

Rs.10,000/-

(ii)

Loss of estate

:

Rs.10,000/-

(iii)

Funeral expenses

:

Rs.10,000/-

(iv)

Loss of consortium

:

Rs.10,000/-

Total

Rs.40,000/-

In all the claimants are entitled to Rs. 9,04,000/- from the date of claim petition till its realization.

30. The Tribunal has awarded interest @ 8% per annum.

31. It is a beaten law of the land that the rate of interest should be awarded as per the prevailing rates, in view of the judgments rendered by the Apex Court in cases titled as United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others, reported in (2002) 6 SCC 281; Satosh Devi v. National Insurance Company Ltd. and others, reported in 2012 AIR SCW 2892; Amrit Bhanu Shali and others v. National Insurance Company Limited and others reported in (2012) 11 SCC 738; Smt. Savita v. Binder Singh & others, reported in 2014, AIR SCW 2053; Kalpanaraj & others v. Tamil Nadu State Transport Corpn., reported in 2014 AIR SCW 2982; Amresh Kumari v. Niranjana Lal Jagdish Pd. Jain and others, reported in (2015) 4 SCC 433, and Mohinder Kaur and others v. Hira Nand Sindhi (Ghoriwala) and another, reported in (2015) 4 SCC 434, and discussed by this Court in a batch of FAOs, FAO No. 256 of 2010, titled as Oriental Insurance Company v. Smt. Indiro and others, being the lead case, decided on 19.06.2015.

32. The claimants are entitled to interest at the rate of Rs. 7.5% per annum from the date of filing the claim petition till its realization.

33. The insurer is directed to deposit the amount, within eight weeks from today before this Registry. On deposit, the entire amount be released to the claimants, strictly, in terms of the conditions contained in the impugned award, through payees' cheque account or by depositing the same in their bank accounts.

34. Viewed thus, the appeal (FAO No. 335 of 2011), filed by the insurer is dismissed and appeal (FAO No. 376 of 2011), filed by the claimants is allowed. The compensation is enhanced and impugned award is modified, as indicated hereinabove.

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