
(2015) 10 SHI CK 0051
In the High Court Of Himachal Pradesh
Case No : FAO (MVA) No. 301 of 2009

Promila Sharma

APPELLANT

Vs

The New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 158(6), 166(4), 169, 176(b)

Citation : (2015) 10 SHI CK 0051

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

Bench : Single Bench

Advocate : Shilpa Sood, Advocate, for the Appellant; B.M. Chauhan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J.

1. Subject matter of this appeal is the judgment and award dated 25.5.2009, made by the Motor Accident Claims Tribunal, Fast Track Court, Shimla, hereinafter referred to as "the Tribunal", for short, in M.A.C. No. 7-S/2 of 2007, titled Smt. Promila Sharma versus The New India Assurance Company Ltd. and others, whereby the claim petition filed by the claimant was dismissed, hereinafter referred to as "the impugned award", for short.

2. It appears that the claimant had invoked the jurisdiction of the Motor Accident Claims Tribunal, Shimla, for the grant of compensation to the tune of Rs. 40 lacs, as per the break-ups given in the claim petition, on account of death of her son, namely Pradeep Kumar. It is averred in the claim petition that on 28.7.2006, the deceased was traveling in Mahindra Pick Up No. HP-27-A-0885 owned by respondent No. 2 Sh. Jagdish Dutt Sharma, father of the deceased. Respondent No. 3 Sukh Dev was driving the said vehicle. The vehicle was loaded with grit belonging to the deceased to be supplied and delivered by him at Government Senior Secondary School Kanam. It is stated that when the vehicle reached at

Hairpin bend on the Kanam-Spillo Road, respondent No. 3 lost control over it, due to excessive speed and the vehicle went off the road and fell down in the khud. DDR No. 15 dated 28.7.2006 is stated to have been registered in police station Pooh. The deceased sustained injuries. Immediately he was taken to CHC Spillo from where he was referred to Shimla but on the way to Shimla he succumbed to the injuries. The claimant is stated to be 26 years of age and was earning Rs. 3 lacs per annum from various sources, details of which are given in para 6 of the claim petition.

3. The claim petition was resisted and contested by respondent No. 1 and following issues came to be framed on 11.12.2007.

"(i) Whether Sh. Pradeep Kumar died because of the rash and negligent driving of the vehicle No. HP-27-A-0885 by the respondent No. 3 as alleged? OPP.

(ii) If issue No. 1 is proved in affirmative, whether the petitioner is entitled to the compensation as claimed. If so, its quantum and from whom? OP Parties.

(iii) Whether the petition is not maintainable in the present form? OPR.

(iv) Whether the driver of the offending vehicle was not holding and possessing a valid and effective driving licence to drive it. If so, its effect? OPR.

(v) Whether the vehicle was being plied in violation of the terms and conditions of the Insurance Policy. If so, its effect? OPR.

(vi) Whether the vehicle was being plied without valid registration cum fitness certificate and route permit etc. as alleged? OPR.

(vii) Whether the petition is bad for non-joinder of the necessary parties? OPR.

(viii) Whether the petition is collusive as alleged. If so, its effect? OPR.

(ix) Relief."

4. The claimant examined three witnesses, namely Rajesh Kumar (PW1), HHC Gian Chand (PW2) and Sh. Kunj Lal (PW4) and stepped herself into the witness box as PW3.

5. The respondents, on the other hand examined two witnesses, namely HC Vinod Kumar (RW1) and S.I. Brij Lal (RW2).

6. The Tribunal, after scanning the evidence held that the claimant has failed to prove that the driver had driven the vehicle rashly and negligently, decided issue No. 1 against the claimant and dismissed the claim petition.

7. Issues No. 4 to 7 were not pressed and issues No. 3 and 8 were decided in favour of the respondents, keeping in view the findings returned on issue No. 1. It was held that issue No. 2 has become redundant.

8. Feeling aggrieved, the claimant has questioned the impugned award, on the grounds taken in the memo of appeal.

9. At the outset, I am of the considered view that the Tribunal has fallen in an error in dismissing the claim petition for the following reasons.

10. The claimant has specifically averred in the claim petition that the driver had driven the vehicle rashly and negligently which resulted into the death of Pradeep Kumar. Smt. Promila Sharma claimant, PW1 Rajesh Kumar, PW2 Gian Chand and PW4 Kunj Lal have given details how the accident has occurred and Tribunal has discussed their evidence. But despite that decided the claim petition as if it was a civil suit. The witnesses of respondents H.C. Vinod Kumar (RW1) and S.I. Brij Lal (RW2) have also deposed that the accident was outcome of sudden tyre bursting. Tyre bursting is also a rash and negligent driving. Had the driver taken due care and caution, he would have managed the speed of the vehicle and avoided the accident in which deceased sustained the injuries and succumbed to the same. Gian Chand (PW2) has proved Ext. PW2/A copy of rapat which is proof to the effect that the accident was outcome of tyre bursting.

11. The Tribunal, despite having made the discussion in para 12, 14 and 15 of the impugned award, held that the driver has not driven the vehicle rashly and negligently and the onus was on the claimant to prove the rash and negligent driving of the driver as if it was deciding a criminal case.

12. It is also beaten law of the land that the claim petition is to be determined summarily and that is why the Code of Civil Procedure is not applicable. Some of the provisions of Code of Civil Procedure have been made applicable in terms of the provisions of the Rules framed by the Central Government as well as State Government. The State of Himachal Pradesh has also framed the Himachal Pradesh Motor Vehicles Rules, 1999 (for short "the Rules") in terms of Sections 169 and 176(b) of the Motor Vehicles Act, and only some of the provisions of the Code of Civil Procedure have been made applicable.

13. The mandate of Chapter XI of the Motor Vehicles Act provides for the grant of compensation to the victim 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.

14. My this view is fortified by the judgment delivered by the apex court in *Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another, , N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, and Oriental Insurance Co. Vs. Mst. Zarifa and Others, .*

15. 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. Versus Smt. Jamna Devi and others, FAO No. 287 of 2014 along with connected matter, decided on 18.9.2015 titled Tulsi Ram versus Smt. Mena Devi and others, FAO No. 72 of 2008 along with connected matter decided on 10.7.2015 titled Anil Kumar versus Nitim Kumar and others and FAO No. 174 of 2013 decided on 5.9.2014 titled Kusum Kumari versus M.D. U.P Roadways and others.*

16. Having said so, the accident has occurred while using a motor vehicle and because of tyre bursting, the vehicle met with an accident and deceased sustained the injuries and succumbed to the injuries. As discussed hereinabove, there is ample evidence that the claimant is victim of a vehicular accident which was caused by the driver of the vehicle, while driving the vehicle in a rash and negligent manner. Accordingly, the findings returned on issue No. 1 are set aside and it is held that the claimant has proved that the accident was outcome of use of a motor vehicle and due to rash and negligent driving of the driver.

17. Before I deal with issue No. 2, I deem it proper to deal with issues No. 3 and 8 at the first instance. It was for the respondents to prove both these issues, have not led any evidence to prove that there was collusion between the claimant and the respondents. Had there been any collusion between the claimant and the driver, the driver would have admitted that he had caused the accident. The insurer has not led any evidence to prove that there was collusion amongst the claimant, owner and the driver. Insurer- respondent No. 1 has also failed to prove that the claim petition was not maintainable.

18. It is apt to record herein that the law on motor accidents claims has gone through a sea change. Now copy of FIR can be treated as claim petition, in terms of the mandate of Sections 158(6) and 166(4) of the Motor Vehicles Act, for short "the Act".

19. Accordingly, both these issues are decided in favour of the claimant and against the respondents.

20. Respondents have not pressed issues No. 4 to 7, are not in dispute.

21. Issue No. 2. The claimant has specifically averred that the deceased was earning Rs. 3 lacs per annum and has given details of his income in para 6 of the claim petition. The claimant has stated that the deceased was dealing with building material and was agriculturist and horticulturist by profession. He was a brilliant student and has proved his testimonials Ext. PW3/B and Ext. PW3/C, mention of which has been made in para 10 of the impugned award by the Tribunal. Kunj Lal (PW4) is Tax Assistant. He has given details that deceased was submitting income tax returns.

22. Keeping in view the budding age of the deceased read with the fact that he was a business man, dealing with building material and having fruit orchard, by a guess work he would have been earning Rs. 6000/- per month, was a bachelor, one half has to be deducted. Thus, the claimant has lost source of dependency to the tune of Rs. 3000/- per month.

23. Admittedly, the deceased was 26 years of age at the time of accident and the multiplier applicable is "16" in view of the ratio laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, which has also been followed and affirmed in Reshma Kumari and Others Vs. Madan Mohan and Another, . Thus, the claimant is entitled to Rs. $3000 \times 12 \times 16 =$ Rs. 5,76,000/-

24. The claimant has lost her son, is also entitled to Rs. 10,000/- under the head "loss of estate", Rs. 10,000/- under the head "love and affection" and Rs. 10,000/- under the head "funeral expenses". Viewed thus, in all, the claimant is held entitled to Rs. 5,76,000/-+30,000/- total Rs. 6,06,000/-, with interest @7.5% per annum from the date of claim petition till its realization.

25. The question is who is to be saddled with the liability.

26. The factum of insurance is not in dispute. The learned counsel for the insurer has argued that the father of the deceased and husband of the claimant was owner of the vehicle thus, the insurer is not liable to indemnify. The argument though is attractive, but is devoid of any force for the following reasons.

27. The claimant has filed the claim petition for the grant of compensation on account of death of her son. The vehicle was insured and the insurer has to indemnify. Thus, the insurer has to be saddled with the liability.

28. Having glance of the above discussion, the appeal is allowed, the impugned award is set aside and the claim petition is granted. The claimant is held entitled to compensation to the tune of Rs. 6,06,000/- with interest @7.5% per annum from the date of claim petition till its realization and insurer is saddled with the liability.

29. The insurer is directed to deposit the amount along with interest from the date of filing of the claim petition till its realization, within six weeks from today in the Registry. On deposit, the entire amount be released to the claimant, through payees' cheque account.

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