(2016) 10 SHI CK 0072

In the High Court Of Himachal Pradesh

Case No : FAO No. 123 of 2012

Rafia Ram APPELLANT

Vs

Rakhi RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 171

Citation : (2017) AAC 430

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Raghunandan Chaudhary, Advocate, for the Appellant; Mr. H.S. Rangra, Advocate, for the Respondent Nos. 1 to 3; Mr. S.K. Acharya, Advocate, for the Respondent No. 4 & 5; Mr. Ashwani K. Sharma, Senior Advocate, with Mr. Ishan Thakur, Advocate, for the R

Final Decision : Allowed

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral)—Challenge in this appeal is to award, dated 16th September, 2011, made by the Motor Accident Claims Tribunal II, Mandi, District Mandi, H.P., (for short "the Tribunal") in MACT No. 75 of 2003, titled as Smt. Rakhi and others v. Sh. Arun Kumar and others, whereby compensation to the tune of Rs. 12,89,288/- with interest @ 6% per annum from the date of filing of the claim petition till its realization came to be awarded in favour of the claimants and the owner-insured of Maruti Van came to be saddled with liability (for short "the impugned award").

2. The appellant-owner-insured of Maruti Van has questioned the impugned award on the grounds taken in the memo of the appeal.

3. Learned counsel appearing on behalf of the appellant-owner-insured of the Maruti Van argued that another claim petition, being Claim Petition No. 12 of 2008, titled as Smt. Ranjeeta & others v. Arun Kumar & others, arising out of the same accident came to be determined by Motor Accident Claim Tribunal (I), Mandi (for short "MACTI") in terms of award, dated 12th January, 2010, wherein

it was held that the accident was outcome of rash and negligent driving of bus, bearing registration No. HP316555, by its driver and the insurer of the bus came to be saddled with liability. Further argued that the said award was questioned by the insurer of the bus before this Court by the medium of FAO No. 222 of 2010, titled as National Insurance Company Ltd. v. Smt. Ranjeeta & others, and the award made by MACTI was upheld by this Court vide judgment, dated 10th April, 2015. It has been prayed that in view of the above said position, the impugned award be set aside and the insurer of the bus be saddled with liability and the appellant-owner-insured of the Maruti Van be exonerated. He has also made available copy of the judgment in FAO No. 222 of 2010, across the Board, made part of the file.

4. On the last date of hearing, Mr. Ashwani K. Sharma, learned Senior Counsel, was asked to examine the judgment in FAO No. 222 of 2010 (supra) and seek instructions. In sequel thereto, Mr. Sharma frankly conceded that it is a fact that the claim petition, subject matter of FAO No. 222 of 2010, was outcome of the same accident and the insurer of the bus was saddled with the liability by MACTI, which was upheld by this Court vide judgment (supra) and the said judgment has attained finality.

5. The following issues were framed by the Tribunal in the claim petition in hand on 2nd December, 2006:

"1. Whether deceased Joginder Kumar died due to the rash and negligent driving of drivers of bus No. HP-31-6555 and maruti van No. HP-01-0517 as alleged? OPP

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

3. Whether Raj Kumar, driver of bus No. HP-31-6555 was not having valid and effective driving license at the time of accident? OPR3

4. Whether the accident had taken place due to rash and negligent driving of Sanjay Kumar, driver of Maruti Van No. HP-01-0517 as alleged, if so, to what effect? OPR3

5. Whether the bus No. HP-31-6555 was being driven in contravention of terms and conditions of the insurance policy? OPR3

6. Relief."

6. The Tribunal, after scanning the evidence, oral as well as documentary, held that the accident had taken place due to the negligence of driver of the Maruti Van, which is factually and legally incorrect as per the record and also against the decision/award made by MACTI, which has been upheld by this Court and has attained finality. The parties are caught by the doctrine of res judicata.

7. Having said so, the Tribunal has fallen in an error in determining issues No. 1 & 4 and it is held that the driver of the bus, bearing registration No. HP316555, had driven the same rashly and negligently at the relevant point of time and

caused the accident, in which two persons including deceased-Joginder Kumar sustained injuries and succumbed to the said injuries. Issues No. 1 and 4 are decided accordingly.

8. There is no dispute viz-a-viz quantum of compensation, driving licence of the driver of the bus and the terms and conditions contained in the insurance policy. The findings returned by the Tribunal qua these issues have attained finality.

9. The Tribunal has also fallen in an error in awarding interest @ 6% per annum, which was to be awarded as per the prevailing rates.

10. It is 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; Santosh 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. Niranjan 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.

11. Having said so, I deem it proper to enhance the rate of interest from 6% per annum to 7.5% per annum from the date of filing of the claim petition till its realization.

12. Learned counsel for the insurer of the bus submitted that the impugned award so far it relates to awarding interest @ 12% per annum be set aside.

13. Keeping in view all the facts read with the judgment made by this Court in FAO No. 222 of 2010 (supra), I deem it proper to modify the impugned award by providing that the insurer of the bus has to satisfy the impugned award.

14. Viewed thus, it is held that the claimants are entitled to compensation to the tune of Rs. 12,89,288/- with interest @ 7.5% per annum from the date of the claim petition till its realization and the insurer of the bus is saddled with liability.

15. The awarded amount be deposited before the Registry within eight weeks. On deposition, the same be released in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee''s account cheque or by depositing the same in their respective bank accounts.

16. The statutory amount deposited by the appellant-owner-insured of the Maruti Van is awarded as costs in favour of the claimants. The said amount be also released in favour of the claimants.

17. The appeal is allowed and the impugned award is modified, as indicated herein above.

18. Send down the record after placing copy of the judgment on Tribunal''s file.

