
(2015) 04 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : FAO No. 342 of 2012

Rajesh Kumar and Others	Vs	APPELLANT
Sangeeta Devi and Others		RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 04 SHI CK 0090

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

Bench : Single Bench

Advocate : Neel Kamal Sharma, for the Appellant; Anjali Soni Verma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. Subject matter of this appeal is the award, dated 5th May, 2012, made by the Motor Accident Claims Tribunal (III), District Kangra, H.P., (hereinafter referred to as "the Tribunal") in RBT MACP No. 154-K/07/10, titled Smt. Sangeeta Devi and others versus Rajesh Kumar alias Pintu and another, whereby compensation to the tune of Rs. 8,66,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, came to be awarded in favour of the claimants and against the respondents, (hereinafter referred to as the "impugned award").
2. The claimants have not questioned the impugned award, on any count. Thus, it has attained finality so far as it relates to them.
3. The respondents, i.e. the owner and the driver have challenged the impugned award on the grounds taken in the memo of appeal.
4. It is necessary to give a brief summary of the case, the womb of which has given birth to the present appeal.

5. The claimants being victims of the motor vehicular accident, had invoked the jurisdiction of the Tribunal, in terms of Section 166 of the Motor Vehicles Act, 1988, for short "the Act", for grant of compensation to the tune of Rs. 15,00,000/-, as per the break-ups given in the claim petition. It is averred in the claim petition that appellant Rajesh Kumar, had driven the vehicle-Motor Cycle bearing registration No. HP-39-6213, rashly and negligently, on 31.12.2006, at about 7.00 p.m., near Bagadu, in front of Trigart Flower Nursery, Tehsil Shahpur, District Kangra, H.P., hit Ashok Kumar, who was a pedestrian on the road, caused injuries to him, who succumbed to the injuries. The claimants have also pleaded in the claim petition that they were dependants upon the deceased who was their sole bread earner and was earning Rs. 6,000/-, being mason by profession.

6. The respondents contested the claim petition on the grounds taken in their memo of objections.

7. Following issues came to be framed by the Tribunal:

"1. Whether the deceased Ashok Kumar died due to the streaming of motorcycle HP-39-6213 by respondent No. 1 against him on the road at Bagdu within police station Shahpur as alleged? ...OPP

2. Whether the petitioner being legal heirs of the deceased are entitled to compensation for his death from the respondents. If so to what amount and who is liable to pay this compensation to the petitioners? ...OPP

3. Whether the petition is not maintainable in the present form as alleged? ...OPR

4. Whether the offending vehicle was not involved in the accident on 31.12.06 as alleged? If so its effect? ...OPR

5. Relief"

8. The claimants examined Shri Harbans Lal (PW-1), Shri Harbans Singh (PW-3) and Shri Om Parkash (PW-4). One of the claimants, namely, Smt. Sangeeta Devi also appeared in the witness box as PW-2. Driver Rajesh Kumar appeared in the witness box as RW-1 and Ajay Kumar owner-insured also appeared in the witness box as RW-2.

9. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have proved that driver, namely, Rajesh Kumar had driven the offending vehicle, rashly and negligently, caused the accident and caused injuries to deceased Ashok Kumar, who succumbed to the injuries.

10. I have gone through the evidence and the documents on the record and am of the considered view that the Tribunal has not fallen in error in recording findings on issues No. 1 and 4. Accordingly, the same are upheld.

11. Before I deal with Issue No. 2, I deem it proper to deal with issues No. 3.

12. It was for the appellants to prove issue No. 3 but have failed to discharge the onus. I have gone through the record and am of the considered view that the

claim petition was maintainable under Section 166 of the Act. Accordingly, the findings returned by the Tribunal on issue No. 3 are also upheld.

13. The claimants have pleaded and proved that the income of the deceased was Rs. 6,000/- per month. The Tribunal, after deducting 1/4th of the income towards personal expenses of the deceased, held that the claimants have lost source of dependency to the tune of Rs. 4500/- per month. It has correctly made deductions and applied the multiplier of "14", in view of the Schedule appended to the Act and the ratio laid down by the Apex Court in *Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another*, reported in AIR 2009 SC 3104 read with *Reshma Kumari and others versus Madan Mohan and another*, reported in , 2013 AIR (SCW) 3120. Accordingly, the findings recorded by the Tribunal on issue No. 2 are also upheld.

14. At this stage, learned Counsel for the respondents-claimants stated at the Bar that the appellants have deposited only Rs. 25,000/- at the time of filing of the appeal and the claimants have filed execution petition which is pending before the Tribunal for the last more than two years despite the fact that there was no stay.

15. The learned Presiding is directed to decide the said execution petition within two months from today.

16. Having said so, the impugned award is upheld and the appeal is dismissed.

17. Send down the records after placing a copy of the judgment on the file of the claim petition.