
(2014) 06 SHI CK 0078

In the High Court Of Himachal Pradesh

Case No : FAO No. 488 of 2007, FAO No. 315 of 2008 and FAO No. 198 of 2014

Rakesh Kumar

APPELLANT

Vs

United Insurance Company
 Ravinder Kumar Sharma
Vs Rakesh Kumar
 United India Insurance Company
Limited Vs Ravinder Kumar Sharma

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(21)

Citation : (2014) 06 SHI CK 0078

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

Bench : Single Bench

Advocate : Harish Bahl, Advocate in FAO No. 488 of 2007, Mr. Neel Kamal Sood, Advocate in FAO No. 315 of 2008 and Mr. Sanjay Jaswal, Advocate in FAO No. 198 of 2014, Advocate for the Appellant; Neel Kamal Sood, Advocate for Respondent No. 1 in FAO No. 488 of 2007 and for Respondent No. 2 in FAO No. 198 of 2014, Mr. Sanjay Jaswal, Advocate for Respondent No. 2. in FAO No. 488 of 2007 and for Respondent No. 1 in FAO No. 315 of 2008 and Mr. Harish Bahl, Advocate for Respondent No. 2 in FAO No. 315 of 2008 and for Respondent No. 1 in FAO No. 198 of 2014, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.

CMP (M) No. 562 of 2014 in FAO No. 198 of 2014

1. Not on Board. Upon mentioning, taken on Board.
2. By the medium of this limitation petition, the appellant-applicant has sought condonation of delay of six years, four months and nineteen days, which has crept-in in filing the present appeal.
3. At this stage, learned counsel for the appellant-applicant stated at the Bar that the other two appeals arising out of the same judgment/award, being FAOs No. 488 of 2007 and 315 of 2008, have already been admitted. Accordingly, I deem it proper to condone the delay in the present appeal also. Ordered accordingly.

The application is disposed of.

FAO No. 198 of 2014

4. Appeal is taken on Board.

5. Admit. Issue notice. Mr. Harish Bahl and Mr. Neel Kamal Sood, Advocates, waive notice on behalf of respondent No. 1 and respondent No. 2, respectively.

FAOs No. 488 of 2007, 315 of 2008 and 198 of 2014

6. All these appeals are outcome of a motor vehicular accident, which was allegedly caused by owner-cum-driver, namely Shri Rakesh Kumar, while driving jeep, bearing registration No. HP-55-1771, rashly and negligently, on 25th December, 2003, at about 12.00 P.M. near Village Chaukat on Nadaun-Majheen road. Thus, I deem it proper to dispose of all these appeals by a common judgment.

7. In FAO No. 488 of 2007, the insurer-United India Insurance Company has called in question the award, dated 25th August, 2007, passed by the Motor Accident Claims Tribunal (I), Kangra Division at Dharamshala, Himachal Pradesh (hereinafter referred to as "the Tribunal") in M.A.C.P. No. 42-G/II-2004, titled as Ravinder Kumar Sharma versus Rakesh Kumar & another, whereby compensation to the tune of Rs. 2,08,000/- came to be awarded in favour of the claimant-injured with interest @ 7 1/2% per annum from the date of the petition till deposition of the amount (hereinafter referred to as "the impugned award") on the grounds taken in the memo of appeal.

8. The insurer-United India Insurance Company has questioned the impugned award on the ground that the Tribunal has fallen in error in asking the insurer-United India Insurance Company to satisfy the award and then to recover the same from the owner-cum-driver of the offending vehicle.

9. The claimant-injured has questioned the impugned award, by the medium of FAO No. 315 of 2008, so far it relates to adequacy of compensation on the grounds taken in the memo of appeal.

10. FAO No. 198 of 2014 is directed against the impugned award whereby the owner-cum-driver was saddled with liability, but the insurer-United India Insurance Company was asked to satisfy the award and recover the same from the owner-cum-driver.

11. In order to determine the issues and return findings in all the three appeals, viz-a-viz, the questions in dispute, it is profitable to give a brief resume of the facts of the case.

Brief facts:

12. Claimant-injured, namely, Shri Ravinder Kumar Sharma, being the victim of a motor vehicular accident, which was caused by the owner-cum-driver, namely, Shri Rakesh Kumar, while driving the jeep, bearing registration No. HP-55-1771,

rashly and negligently, on 25th December, 2003, hit motorcycle, bearing registration No. HP-36-5958, which was being driven by the claimant-injured, sustained injuries, has sought compensation to the tune of Rs. 3,50,000/- as per the breaks-up given in the claim petition.

13. The insurer-United India Insurance Company and the owner-cum-driver have resisted the claim petition on the grounds taken in the memo of objections.

14. The following issues came to be framed by the Tribunal on 19th November, 2004:

1. Whether on 25.12.2003, the respondent No. 1 was driving Jeep No. HP-55-1771 in a rash and negligent manner and struck with motor Cycle No. HP-36-5958 driven by petitioner as a result the petitioner sustained multiple injuries as alleged?...OPP

2. If issue No. 1 is proved, whether the petitioner is entitled for compensation, if so, to what extent and from whom?...OPP

3. Whether this accident was result of rash and negligent driving by the petitioner himself as alleged?...OPR-1 & 2

4. Whether the petition is bad for non joinder of owner, driver and Insurance Co. of Motor Cycle?...OPR-1 & 2

5. Whether the respondent No. 1 was not holding valid and effective DL at the time of accident?...OPR-1 & 2

6. Whether vehicle No. HP-55-1771 was not insured with respondent No. 2 at the time of accident?...OPR-1 & 2

7. Whether the petition is collusive between the petitioner and respondent No. 1 as alleged?...OPR-2

8. Relief.

15. The parties have led evidence. The Tribunal, after scanning the oral as well as the documentary evidence, held that the claimant-injured has proved that he had sustained injuries in a vehicular/traffic accident, which was caused by the owner-cum-driver, namely Shri Rakesh Kumar, while driving the offending vehicle-jeep, bearing registration No. HP-55-1771, rashly and negligently and, after deciding all the issues, held that the claimant-injured is entitled to compensation to the tune of Rs. 2,08,000/- with interest @ 7 1/2% per annum in terms of the impugned award.

16. I have heard learned counsel for the parties and have gone through the evidence, oral as well as documentary, available on the record. I deem it proper to discuss the findings returned by the Tribunal issue wise.

Issues No. 3 and 4:

17. These issues are neither argued nor pressed by the owner-cum-driver or by the insurer-United India Insurance Company. However, I have gone through the findings returned by the Tribunal. There is ample evidence on the file which do disclose that the accident was outcome of the rash and negligent driving of the owner-cum-driver of the offending vehicle and not the outcome of the rash and negligent driving of the claimant-injured himself. Accordingly, the findings returned by the Tribunal on issue No. 3 are upheld.

18. The Tribunal has held that the petition was not suffering from non-joinder or mis-joinder of parties. In view of the findings returned on issue No. 3, issue No. 4 came to be rightly decided against the owner-cum-driver and the insurer-United India Insurance Company and the findings returned on issue No. 4 are accordingly upheld.

Issue No. 7:

19. Learned counsel for the insurer-United India Insurance Company has neither argued nor pressed this issue. However, I have gone through the pleadings, the evidence and the impugned award. The evidence available on the record is sufficient to hold that the accident was outcome of rash and negligent driving of the owner-cum-driver of the offending vehicle-jeep, thus, is not the outcome of collusion between the claimant-injured and the owner-cum-driver. Accordingly, the findings returned by the Tribunal on issue No. 7 are upheld.

Issue No. 6:

20. This issue is neither pressed nor argued by the learned counsel for the insurer-United India Insurance Company. However, from a bare perusal of the oral as well as the documentary evidence, more particularly, the insurance policy of the offending vehicle, it is crystal clear that the offending vehicle was very much insured with the insurer-United India Insurance Company at the relevant point of time. Therefore, the findings returned by the Tribunal on issue No. 6 are also upheld.

Issue No. 5:

21. Admittedly, the driver was having licence and was competent to drive light motor vehicles. The said fact is not in dispute. The Tribunal has held that the driver, though was having licence to drive light motor vehicles, was not competent to drive the offending vehicle-jeep, bearing registration No. HP-55-1771, is legally and factually incorrect for the following reasons:

22. The offending vehicle-jeep falls within the definition of "Light Motor Vehicle" in terms of Section 2(21) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act"). It is apt to reproduce Section 2(21) of the MV Act herein:

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(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen

weight of any of which, does not exceed 7,500 kilograms.

23. The gross weightage of a light motor vehicle is given as 7500 kilograms. Meaning thereby, the vehicle, gross weight of which is 7500 kilograms, comes under the description and kind of "light motor vehicle", as per definition (supra).

24. The Registration Certificate and the Insurance Policy of the offending vehicle-jeep do disclose that the gross vehicle weight of the offending vehicle-jeep was 3500 kilograms, thus, was falling within the definition of a "light motor vehicle".

25. The same view was taken by me as Acting Chief Justice of this Court in FAO No. 293 of 2006, titled as Oriental Insurance Company versus Sudesh Kumari and others, decided on 4th April, 2014; FAO No. 354 of 2006, titled as National Insurance Company versus Gopal Sahi and others, decided on 4th April, 2014 and in a bunch of two appeals, FAO No. 196 of 2008 being the lead case, titled as Sarwan Singh versus Bimla Sharma & others, decided on 30th May, 2014.

26. Having said so, I am of the considered view that the driver of the offending vehicle was having valid and effective driving licence to drive the said offending vehicle-jeep and the Tribunal has fallen in error in holding that the driver was not having the valid and effective driving licence to drive the jeep in question. Accordingly, the findings returned by the Tribunal on issue No. 5 are set aside and the said issue is decided in favour of the owner-cum-driver and against the insurer-United India Insurance Company.

Issue No. 1:

27. It is apt to record herein that learned counsel for the insurer-United India Insurance Company and the owner-cum-driver have not questioned the impugned award so far it relates to the findings returned by the Tribunal on issue No. 1. However, I have gone through the record and the evidence, oral as well as documentary, available on the file. There is ample evidence on the file to the effect that the owner-cum-driver, namely, Shri Rakesh Kumar, had driven the offending vehicle-jeep, bearing registration No. HP-55-1771, rashly and negligently on 25th December, 2003 and had caused the accident, hit the motorcycle, on which the claimant-injured was travelling, who sustained injuries and suffered disability. Thus, the findings returned by the Tribunal on issue No. 1 are upheld.

Issue No. 2:

28. The claimant-injured has claimed compensation to the tune of Rs. 3,50,000/- as per the breaks-up given in the claim petition. The Tribunal, after scanning the oral as well as the documentary evidence and the pleadings, applied the guess work and after examining the documents on the file, has rightly recorded that the claimant-injured is entitled for compensation to the tune of Rs. 2,08,000/-, details of which are given in paras 20 to 23, 25 and 26.

29. By no stretch of imagination, it can be said that the compensation awarded is

inadequate or is excessive. I have examined the issue from all angles and am of the considered view that the compensation awarded in terms of the impugned award is adequate.

30. Now, the question is - who is to be saddled with liability?

31. The Tribunal has fallen in error in granting right of recovery to the insurer-United India Insurance Company for the following reasons:

32. The insurer has to plead and prove that the driver was not having the valid and effective driving licence to drive the offending vehicle and the owner has committed the willful breach of the terms and conditions of the insurance policy, which it has failed to do so. As discussed hereinabove, the owner-cum-driver of the offending vehicle was having valid and effective driving licence to drive light motor vehicles and the offending vehicle-jEEP falls within the definition of a light motor vehicle, which fact is not in dispute.

33. Having said so, FAO No. 488 of 2007, the appeal filed by the insurer-United India Insurance Company for exonerating it from the liability to satisfy the award and FAO No. 315 of 2008, the appeal filed by the claimant-injured for enhancement of the compensation are dismissed.

34. Keeping in view the fact that the appeals filed by the insurer-United India Insurance Company and the claimant-injured are dismissed, the appeal filed by the owner-cum-driver is partly allowed and the impugned award is set aside so far it relates to the right of recovery granted to the insurer-United India Insurance Company to recover the amount from the owner-cum-driver of the offending vehicle. It is also held that the insurer-United India Insurance Company has to satisfy the impugned award.

35. Accordingly, FAO No. 198 of 2014 is partly allowed and the impugned award is modified, as indicated hereinabove.

36. The claimant-injured has been dragged to the lis because of the motor vehicular accident, which was caused by the owner-cum-driver of the offending vehicle-jEEP, namely, Shri Rakesh Kumar, and though, the compensation has been awarded to the injured-claimant, but has been denied the same right from the year 2007 till today because of the pendency of these appeals, I deem it proper to impose costs to be paid by the owner-cum-driver of the offending vehicle-jEEP, which are quantified at Rs. 25,000/-.

37. The owner-cum-driver has deposited Rs. 25,000/- at the time of filing of FAO No. 198 of 2014. The same be treated as costs to be paid to the claimant-injured. Registry to release the said amount of Rs. 25,000/- in favour of the claimant-injured through payee's account cheque.

38. Send down the records after placing copy of the judgment on each of the files.