
(2019) 03 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 121 Of 2014, Along With Cross objections
No. 52 Of 2014

Rukko Devi

APPELLANT

Vs

Frontier Bus Service & Others

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Citation : (2019) 03 SHI CK 0011

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Surender Saklani, Anjali Soni Verma, B.M. Chauhan

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The instant appeal, stands directed, by the disabled claimant/appellant herein, against, the award pronounced, by the learned Motor Accident Claims Tribunal-II, Kangra at Dharamshala, H.P., upon, MACP No. 6-P/2006, on, 30.04.2013, wherethrough, compensation amount, borne in a sum of Rs.70,000/- stood assessed, vis-a-vis, the disabled claimant. The apposite indemnificatory liability thereof, stood fastened, upon respondent No.3, the latter being the insurer of the offending bus, (a) and, upon respondents No.4 and 5, being owner, and, driver of the offending tempo, hence, proportionately, in, 70:30 per centum, (b) given the learned Tribunal recording a finding, that, the disability entailed upon the claimant, being a sequel of contributory negligence, of, the driver of the offending vehicles concerned.

2. It has been fairly stated at the bar by the learned counsel appearing for the contesting litigants, that, respondents No.3, whereuponwhom, the apposite indemnificatory liability, in, the afore 70 per centum, vis-a-vis, the afore stated compensation amount, hence, stood fastened, (i) has not preferred any appeal before this court, wherethrough, it has concerted to make a challenge, upon, the

afore fastening thereon, of, the apposite indemnificatory liability. However, respondents No.4, and, 5, whereuponwhom, in 30 per centum hence indemnificatory liability stood fastened, rather instituted cross-objection No.52 of 2014, hence, therethrough, they assail the afore fastening of the indemnificatory liability rather thereon. On the other hand, the claimant's appeal is directed, for, seeking enhancement of compensation amount, as, assessed qua her.

3. The claimant suffered, as, pronounced by disability certificate, borne in Ex.PW1/A, and, proven by PW-1, a, disability to the extent of 20%, disability whereof was a sequel of fracture of cervical spine C-2. PW-1 in his examination-in-chief, has, made a forthright, and, candid articulation qua hence the claimant being forbidden, rather to perform any hard manual work. The learned learned tribunal under heads (i) attendant charges, (ii) pain and suffering, (iii) loss of amenities and future disability, (iv) expenses towards medical expenditure, and, also (v) towards expenses incurred towards transportation charges, hence respectively assessed compensation, in, a quantum as echoed in the impugned award.

4. The learned counsel appearing for the appellant, does not contest, the factum that the disabled claimant, even subsequent to the entailment of the afore per centum of disability upon her, hence continuing to render the prior thereto, hence, callings of her avocation, as, a Sahayak in Aganwari at Gharana, (i) and, that she continues to draw salary borne in a sum of Rs.3000/- per month. Consequently, it can be safely concluded, that, in sequel, to, the entailment of, a, disability in the afore per centum upon her, hence there is no loss of any future earnings, vis-a-vis, her, from the afore hitherto callings, of, the afore avocation. However, the learned counsel appearing, for, the claimant/appellant herein, has, contended with much vigour, before this Court, that the claimant, was prior to befallment, of, the afore disability upon her, rather performing household chores besides she was also assisting her husband in agricultural work, (ii) hence, upon hers being beset, with, the afore disability in the afore per centum, there being reduction, and, diminution in the earnings of her husband from agricultural work, and, also the household chores hitherto performed by the claimant rather being forbidden to be performed by her, hence, the apt pecuniary losses encumbered upon her, enjoining adequate indemnification in respect thereof.

5. However, the claimant in her deposition, has not made, any apposite articulation qua the purported household chores, purportedly performed by her, prior to the entailment of the afore disability upon her, rather being extantly performed, by engagement of a helper, (a) nor she has communicated in her deposition, that, the agricultural work of her husband, in respect whereof she lent assistance to him, (b) nowat, and, subsequent to befallment, of, the afore disability upon her, rather being performed by her husband, by the latter engaging paid labourers, and, hence there being a dire necessity, upon, this Court to indemnify her. In sequel, for, want of adduction of the afore evidence, renders the afore submissions, as made, being construable, to be surmisal, and,

no credence rather thereon can hence can placed.

6. Nonetheless, with even if there is no loss of any permanent earnings to the petitioner, from, the callings of her hitherto avocation, as, a Sahayak in the Aganwari center concerned, (i) yet with PW-1 in his examination-in-chief making an echoing, that, the claimant would face difficulty in performing hard manual work, (ii) also, with the apposite per centum, of, the disability as pronounced in Ex.PW1/A, rather appertaining to the whole body, thereupon with the claimant being encumbered, with, perennial pain or suffering, (iii) hence, it was rather appropriate for the learned tribunal, vis-a-vis, loss of amenities, and, also vis-a-vis, concomitant perennial pain, and, suffering arising therefrom, hence, award an amount, vis-a-vis, the disabled claimant, rather in a sum higher than Rs.50,000/-. Consequently, apart from a sum of Rs.50,000/-, as, awarded vis-a-vis, the disabled claimant, under the afore head, this Court awards, a, further sum of Rs.1,00,000/-, and, the apposite indemnificatory liability thereof, is fastened, in the manner, as, ordered by the learned tribunal.

7. Even though cross objectors/respondents No. No.4 and 5 hence seek reversal, of, findings, appertaining to the relevant mishap, rather being a sequel of contributory negligence, arising from, commission of tort of negligence, by the drivers, of, the offending vehicles concerned, (a) yet the afore submission, hence, falters in the face of forthright, and, unflinching evidence existing on record, wherethrough, vivid displays, spur qua the driver, of, bus bearing No. HP-36-1989, hence, plying the afore bus in the middle of the road, and, in a negligent manner, (b) and, the abrupt application of brakes thereon, by its driver, evidently begetting, the, unwanted sequel, of, the driver, of, tempo bearing No. HP-68-0586, hence, striking the rear of the bus, (c) whereupon, the disabling injuries stood entailed, upon the claimant, (d) thereupon, the afore manner of negligent driving of the offending vehicles concerned, reiteratedly, and, fortifyingly, empowers this Court to conclude, that, hence the drivers, of, vehicle bearing No. HP-36-1989, and, of, vehicle bearing No. HP-68-0586, both rendering themselves guilty, for, committing tort of negligence, (e) and, also the proportion in respect whereof the apposite indemnificatory liability, stands respectively fastened upon them, likewise suffers from no infirmity, given it being in complete tandem, with, the evident proportion, of, tort of negligence, as, provenly committed by the drivers, of, the offending vehicles concerned.

8. For the foregoing reasons, the appeal filed by the disabled claimant is allowed in the afore manner, whereas, the cross-objections instituted by the cross-objectors/respondents No.4 and 5, are dismissed, and, the impugned award, is, modified to the extent, that, the appellant/disabled claimant, is, entitled to a compensation borne in a sum of Rs.1,70,000/- along with interest at the rate of 7.5% per annum, from, the date of filing of the petition till its realization. The aforesaid amount shall be paid by respondents No.3 and 4 & 5 in the per centum, as ordered by the learned tribunal i.e. 70 and 30 per cent. All pending applications also stand disposed of. Records be sent back forthwith.