
(2017) 04 SHI CK 0027
In the High Court Of Himachal Pradesh
Case No : 354 of 2012

Sabita Sharma and others

APPELLANT

Vs

Amrit Pal Singh and others

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 128](#),
[Section 128](#), [Section 166](#), [Section 166](#),
[Section 128\(1\)](#), [Section 128\(1\)](#) - Safety measures for drivers and pillion riders
- Application for compensation - Safety measures for drivers and pillion riders

Citation : (2017) 04 SHI CK 0027

Hon'ble Judges : Mansoor Ahmad Mir

Bench : Single Bench

Advocate : Shanti Swaroop, Ashwani K. Sharma, Duni Singh

Judgement

1. Subject matter of this appeal is award, dated 13th April, 2012, made by the Motor Accident Claims Tribunal, Fast Track Court, Una, Distt. Una, H.P. (for short "the Tribunal") in M.A.C. Petition No. 01/2010, titled as Sabita Sharma and others versus Amritpal Singh and others, whereby after holding the deceased to be negligent to the extent of 30% in causing the accident, compensation to the tune of Rs. 15,40,000/with interest @ 7% per annum from the date of filing of the petition till its realization came to be awarded in favour of the claimants and the insurer was saddled with liability to the extent of 70% (for short "the impugned award").

2. The insurer, ownerinsured and driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The appellantsclaimants have questioned the impugned award on the following grounds:

(i) That the Tribunal has awarded inadequate compensation; and

(ii) That the accident was caused by the driver of the offending vehicle, i.e. Bolero car, bearing registration No. RJ-03U-0070 and deceased-Gurbir Kumar had not contributed towards the cause of accident, thus, the insurer was to be saddled with the entire liability.

4. In order to determine this appeal, it is necessary to give a brief resume of the facts of the case, the womb of which has given birth to the instant appeal.

5. The claimants invoked the jurisdiction of the Tribunal in terms of the mandate of Section 166 of the Motor Vehicles Act, 1988 (for short "MV Act") for grant of compensation to the tune of Rs. 35,00,000/ , as per the breakups given in the claim petition. The claim petition was resisted by the respondents and the following issues came to be framed by the Tribunal:

"1. Whether deceased Gurbir Kumar died in an accident on 2.12.2009 at about 9.30 a.m. at Chowk Kuthar Beet due to rash and negligent driving of Bolero car bearing registration No.RJ-03U-0070 by respondent No. 1? OPP

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

3. Whether the petitioners have no cause of action? OPR3

4. Whether the vehicle No. RJ-03U-0070 was being used against the terms and conditions of insurance policy? OPR3

5. Whether respondent No. 1 driver of the vehicle was not holding valid and effective driving licence at the time of accident? OPR3

6. Whether the vehicle was being plied without any valid RC, fitness certificate? OPR3

7. Whether the petition is bad for nonjoinder of necessary parties? OPR1& 2

8. Relief."

6. The claimants have examined HC Vipon Kumar as PW1, Shri Dilbag as PW3, Shri Yash Maurya as PW4 and one of the claimants, Smt. Savita Sharma, herself appeared in the witness box as PW2. The driver of the offending vehicle, namely Shri Amrit Pal Singh, himself stepped into the witness box as RW1 and examined Smt. Anjana, Criminal Ahlmad from the office of JMIC, Court No. 2, Una, as RW2. It is apt to record herein that the ownerinsured and insurer of the offending vehicle have not led any evidence. Issue No. 1:

7. The Tribunal, after scanning evidence, oral as well as documentary, held that deceasedGurbir Kumar had also contributed towards the cause of the accident for the reason that at the time of the accident, he was carrying two pillion riders, which is violation of Section 128 (1) of the MV Act.

8. It is apt to reproduce Section 128 (1) of the MV Act herein:

"128. Safety measures for drivers and pillion riders. (1) No driver of a two wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures."

9. The said provision of law clearly mandates that the driver of a two wheeler shall not carry more than one person in addition to himself. Thus, deceased Gurbir Kumar had committed breach of the mandate of Section 128 of the MV Act, therefore, was himself rash and negligent and contributed towards the cause of the accident.

10. The Tribunal has rightly made the discussions and relied upon the judgments made by the Apex Court, this Court and other High Courts, in paras 8 to 28 of the impugned award, need no interference. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

11. Before dealing with issue No. 2, I deem it proper to determine issues No. 3 to 7. Issues No. 3 to 6:

12. It was for the insurer to prove all these issues, has not led any evidence, thus, has failed to discharge the onus. Accordingly, the findings returned by the Tribunal on issues No. 3 to 6 are upheld. Issue No. 7:

13. It was for the driver and owner insured of the offending vehicle to prove how the claim petition was suffering from misjoinder of necessary parties, have not led any evidence to this effect, thus, have failed to discharge the onus. Accordingly, the findings returned by the Tribunal on issue No. 7 are also upheld. Issue No. 2:

14. The Tribunal has rightly saddled the insurer of the offending vehicle with liability to the extent of 70% by holding that the deceased himself had contributed towards the cause of the accident to the extent of 30%, but has fallen in an error in deducting one third towards the personal expenses of the deceased, as the claimants were four in number, thus, one fourth was to be deducted in terms of para 30 of the judgment rendered by the Apex Court in the case titled as Sarla Verma (Smt) and others versus Delhi Transport Corporation and another, reported in (2009) 6 Supreme Court Cases 121, which reads as under:

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one third (1/3rd) where the number of dependent family members is 2 to 3, one fourth (1/4th) where the number of dependent family members is 4 to 6, and one fifth (1/5th) where the number of dependent family

members exceeds six."

15. Admittedly, the deceased was a government employee and his salary was Rs. 19,400/ per month, as per the discussions made by the Tribunal in para 27 of the impugned award, which is not in dispute. Accordingly, it is held that the claimants have suffered loss of dependency to the tune of Rs. 14,550/per month.

16. The age of the deceased was 42 years at the time of the accident. Thus, the Tribunal has rightly applied the multiplier of "14" keeping in view the ratio laid down by the Apex Court in the case titled as Sarla Verma's case (supra), which has been upheld by a larger Bench of the Apex Court in Reshma Kumari & Ors. versus Madan Mohan & Anr., reported in 2013 AIR SCW 3120, read with the Second Schedule appended with the MV Act.

17. Viewed thus, the claimants are held entitled to compensation to the tune of Rs. 14,550/x 12 x 14 = Rs. 24,44,400/under the head "loss of income".

18. The amount of compensation awarded under the head "loss of consortium" to the tune of Rs. 10,000/ and Rs. 10,000/under the head "loss of love and affection" is just and appropriate, is accordingly upheld.

19. The amount awarded by the Tribunal under the head "funeral charges" to the tune of Rs. 5,000/is too meagre. The Tribunal has also fallen in an error in not awarding compensation under the head "loss of estate". Viewed thus, the claimants are also held entitled to compensation to the tune of Rs. 10,000/each under the head "funeral charges" and "loss of estate".

20. Having said so, it is held that the claimants are entitled to compensation to the tune of Rs. 24,44,400/+ Rs. 10,000/+ Rs. 10,000/+ Rs. 10,000/+ Rs. 10,000/= Rs. 24,84,400/. Since the deceased has been held to have contributed towards the cause of accident to the extent of 30%, compensation to the tune of Rs. 17,39,080/is awarded in favour of the claimants.

21. The Tribunal has also committed a legal mistake while awarding interest @ 7% per annum, which was to be awarded as per the prevailing rates.

22. It is a 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 versus Patricia Jean Mahajan and others, reported in (2002) 6 SCC 281; Santosh Devi versus National Insurance Company Ltd. and others, reported in 2012 AIR SCW 2892; Amrit Bhanu Shali and others versus National Insurance Company Limited and others, reported in (2012) 11 SCC 738; Smt. Savita versus Binder Singh & others, reported in 2014 AIR SCW 2053; Kalpanaraj & others versus Tamil Nadu State Transport Corpn., reported in 2014 AIR SCW 2982; Amresh Kumari versus Niranjana Lal Jagdish Pd. Jain and others, reported in (2015) 4 SCC 433; and Mohinder Kaur and others versus 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 versus Smt. Indiro

and others, being the lead case, decided on 19.06.2015.

23. Having said so, I deem it proper to enhance the rate of interest from 7% per annum to 7.5% per annum from the date of filing of the claim petition till its realization.

24. The insurer is directed to deposit the enhanced awarded amount before the Registry of this Court within eight weeks. On deposit, 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.

25. The impugned award is modified and the appeal is disposed of, as indicated hereinabove.

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