

(2016) 04 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : FAO No. 11 of 2010 with FAO No. 87 of 2010.

Satish Kumar and another

APPELLANT

Vs

Tarun Jain and another

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1387 : (2016) ILRHP 784

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

Bench : Single Bench

Advocate : Anuj Gupta and Rohit Sharma, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J. (Oral) - Both these appeals are taken up together for final disposal as the same arise out of common award, dated 20th November, 2009, passed by the Motor Accident Claims Tribunal, Fast Track Court, Shimla, H.P., (for short, the Tribunal), in Claim Petition No.30-S/2 of 2007, titled Satish Kumar and another v. Tarun Jain and others, whereby compensation to the tune of Rs.1,61,000/-, with interest at the rate of 9% per annum, from the date of filing of the claim petition till realization, came to be awarded in favour of the claimants and the owner and the driver came to be saddled with the liability, (for short, the impugned award).

2. Feeling aggrieved, the claimants have challenged the impugned award by way of FAO No.11 of 2010 and sought enhancement of compensation. The driver and the owner have also assailed the impugned award by the medium of FAO No.87 of 2010 and prayed for the dismissal of the claim petition.

3. Since both the appeals arise out of the common award, therefore, the same are taken up together and are being disposed of by this common judgment.

4. Claimants invoked the jurisdiction of the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act) for grant of compensation to the

tune of Rs.20.00 lacs, as per the break-ups given in the claim petition.

5. Respondents resisted the claim petition by filing replies. On the pleadings of the parties, the following issues were settled by the Tribunal:

"1. Whether Sh. Manish Sood died because of the rash and negligent driving of Maruti Car No. DL-5C-0089 by the respondent No.2 as alleged? OPP

2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to the compensation as claimed. If so, its quantum and from whom? OP parties.

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

4. Whether the petitioners have a cause of action? OPP

5. Whether the petitioners have not come to the Court with clean hands? OPR

6. Whether the petitioners are estopped from filing the petition by their act and conduct? OPR

7. Relief."

6. Claimants to prove their case have examined PW-1 HC Tulsi Dass and PW-3 Pawan Sharma, while claimant Satish Kumar appeared in the witness box as PW-2. On the other hand, only the driver of the offending vehicle appeared in the witness box as RW-1.

7. The Tribunal, on scanning the evidence led by the parties, held that the driver of the offending vehicle, namely, Neeraj Jain, had driven the offending vehicle rashly and negligently on the fateful day and had caused the accident. While coming to the said conclusion, the Tribunal has also discussed the findings recorded by the District Consumer Disputes Redressal Forum, Shimla, proved on record as Ext.PW-2/G, wherein it was held that Neeraj Jain (respondent No.2) was driving the vehicle at the relevant point of time and had caused the accident. The said findings recorded by the Forum were assailed before the State Consumer Disputes Redressal Commission and the Commission also upheld the said findings, which have attained finality.

8. Having said so, there is clinching evidence on the file to hold that the said Neeraj Jain had driven the offending vehicle and had caused the accident.

9. Viewed thus, it does not lie in the mouth of the owner and the driver to argue that no accident had taken place. Accordingly, I hold that there is no merit in FAO No.87 of 2010 and the same is dismissed.

10. Coming to FAO No.11 of 2010, the Tribunal has rightly assessed the compensation and has rightly come to the conclusion that the claimants were entitled to Rs.1,61,000/-, as per the discussion made in paragraphs 17 to 19 of the impugned award. I have gone through the findings recorded by the Tribunal. The compensation awarded by the Tribunal, in no way, can be said to be inadequate, rather the same is just and appropriate.

11. Having said so, there is no merit in FAO No.11 of 2010 and the same is also dismissed.

12. Accordingly, the impugned award is upheld. The Registry is directed to release the amount in favour of the claimants forthwith strictly in terms of the impugned award, after proper identification.