

(2014) 09 SHI CK 0092

In the High Court Of Himachal Pradesh

Case No : First Appeal from Order (MVA) No. 442 of 2010

Sewak Ram

APPELLANT

Vs

Desh Raj

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2014) 3 ShimLC 1600

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

Bench : Single Bench

Advocate : G.C. Gupta, Senior Advocate and Meera Devi, Advocate for the Appellant; Satyen Vaidya, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—Respondent No. 2, despite service and despite having given power of attorney on the file is neither present nor there is any representation on its behalf, hence ex parte proceedings are drawn against him. The challenge in this appeal is to the award dated 31.8.2010, passed by the Motor Accident Claims Tribunal Shimla, H.P., for short "The Tribunal" in MAC Petition No. 1-S/2 of 2009 titled Sh. Sewak Ram v. Shri Desh Raj and another, on the ground of adequacy of compensation, hereinafter referred to as "the impugned award", for short.

2. The driver and owner have not questioned the impugned award on any ground, thus, it attained finality, so far as it relates to them.

3. The claimant has not questioned the impugned award on any other ground. In the given circumstances, I deem it proper not to return findings on issues No. 1, 3 and 4, are upheld.

4. In order to determine whether the compensation is adequate, just or otherwise, brief facts are to be noticed.

5. The claimant/appellant being the victim of a vehicular accident, had filed claim petition before the Tribunal for the grant of compensation to the tune of Rs.10

lacs, as per the break-ups given in the claim petition, on the ground that respondent No. 1, namely, Desh Raj driver of the offending HRTC Bus No. HP-07-5487 had driven the said vehicle in a rash and negligent manner on 17.11.2008 at Mundaghat and caused the accident. The deceased sustained injuries while de-boarding the said bus and succumbed to the injuries. The deceased was 25 years of age at the time of accident and his income was Rs. 5,000/- per month and was also having income from agricultural vocations to the tune of Rs. 10,000/-, per month.

6. The Tribunal, after making assessment came to the conclusion that monthly income of the deceased was Rs. 4,500/-.

7. I am of the considered view that the Tribunal has rightly made the assessment but has fallen in error in assessing the loss of dependency and has lost sight of the judgment of the apex Court delivered in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , upheld in Reshma Kumari and Others Vs. Madan Mohan and Another, .

8. The claimant is father of the deceased, who has lost his budding son, source of help and hope in the old age. 50% was to be deducted towards his personal expenses and 50% was to be held as loss of source of income. Thus, it is held that the claimant has lost source of dependency to the tune of Rs. 2250/- per month.

9. Admittedly, the age of the deceased was 25 years at the time of the accident and the Tribunal has rightly held that the age of the deceased was 25 years but has again fallen in error in applying the multiplier. The multiplier of "15" was applicable, after taking deductions, as per the Schedule appended to the Motor Vehicles Act read with Sarla Verma's judgment supra. Thus, I hereby hold that the multiplier of "15" is applicable.

10. Viewed thus, it is hereby held that the claimant is entitled to compensation to the tune of Rs. $2250 \times 12 = 2,70,000 \times 15 =$ Rs. 4,05,000/- with interest @ Rs. 9% per annum, as awarded by the Tribunal, from the date of filing the claim petition, till its realization.

11. Accordingly, the compensation is enhanced and impugned award is modified, as indicated above. Respondent No. 2 is directed to deposit the enhanced amount within six weeks from today in the Registry of this Court. On deposit, the amount be released in favour of the claimant, through payee's cheque account.

12. The Tribunal is directed to release the entire amount deposited before it, in favour of the claimant, as per the terms and conditions contained in the impugned award. The appeal stands disposed of accordingly. Send down the record, forthwith.