(2018) 09 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order (MVA) No. 367 of 2014

Shriram General Insurance Company Limited — APPELLANT

Vs

Smt. Preeto Devi And Others — RESPONDENT

Date of Decision : 10-09-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 163, 163A, 173

Citation : (2018) 09 SHI CK 0008

Hon'ble Judges : SANDEEP SHARMA, J

Bench : Single Bench

Advocate : Rakesh Kumar Chaudhary, Virender Chauhan,

Final Decision : Partly Allowed

Judgement

Sandeep Sharma, J.

1. Instant appeal under Section 173 of the Motor Vehicles Act is directed against Award dated 4.7.2013 passed by the learned Motor Accident

Claims Tribunal, Chamba Division, Chamba, (HP) in M.A.C. Petition No. 33 of 2012, whereby learned Tribunal below has held respondents No.1 and

2/claimants, (hereinafter, â??claimantsâ??) entitled to compensation to the tune of Rs. 4,87,000 alongwith interest at the rate of 7.5 percent per

annum from the date of filing of the petition i.e. 28.3.2012 till its realisation.

2. Briefly stated the facts as emerge from the record are that the claimants being legal heirs of one Jaipal, preferred a petition under Section 163-A of

the Motor Vehicles Act, 1988 (hereinafter, â??Actâ??) before the Motor Accident Claims Tribunal, Chamba Division, Chamba, (HP), seeking

therein compensation to the tune of Rs. 10.00 Lakh from the appellant-Insurance Company as well as respondent No.3, on account of death of Jaipal.

On 10.8.2011, at about 8.40 am, deceased Jaipal died near Village Seri, Pargana Tissa, Tehsil Churah, District Chamba, while driving Vehicle bearing

registration No. HP-73-2784 (passenger bus). Claimants claimed that deceased was driving the ill-fated vehicle in a careful and cautious manner.

When vehicle reached near Seri, it suddenly developed mechanical defect due to which he lost control over the vehicle and accident took place

causing death of deceased Jaipal. Claimants further claimed that at the time of death, deceased was 25 years of age and his monthly income as driver

was Rs. 3300/-. Claimants being widow and son of deceased prayed for compensation from the appellant-Insurance Company as well as respondent

No.3 alongwith interest at the rate of 9% per annum.

3. Respondent No.3 herein i.e. Gurbachan Singh (respondent No.1 before the learned Tribunal below), who is owner of the bus, opposed the claim

petition on the ground of maintainability, locus standi and alleged that petition has been filed solely with a view to grab money. Respondent No.3 also

denied the most of the contents of the petition for want of knowledge and claimed that amount claimed by the claimants is excessive and imaginary

and without any basis. Respondent No.3 also claimed that at the time of accident, vehicle in question was insured with the appellant-Insurance

Company, as such, compensation, if any, is payable by the appellant-Insurance Company.

4. Appellant-Insurance Company opposed the claim of the claimants on the ground that deceased i.e. driver of the vehicle was not having a valid and

effective driving licence at the time of accident and as such claimants are not entitled for any compensation. Appellant-Insurance Company also

claimed that respondent No. 3, owner of the vehicle contravened the provisions of Motor Vehicles Act and Rules as such, committed breach of

insurance policy and as such, is not liable to be indemnified.

5. Learned Tribunal below, on the basis of pleading of parties, framed following issues on 1.10.2012:

â??1. Whether deceased Jaipal died due to use of the vehicle bearing No. HP 73-2784 near Village Seri Pargna Tissa, Tehsil Churah District

Chamba on 10.8.2011? OPP

2. If issue No. 1 is proved in affirmative, as to what amount of compensation the petitioners are entitled to and from whom? OPP

3. Whether the driver of the vehicle was not holding a valid and an effective driving licence to drive the same at the relevant time, as alleged, if so its

effect? OPR2

4. Whether the vehicle in question was being driven in violation of the terms and conditions of the Insurance Policy as alleged, if so, its effect thereto?

OPR2

5. Relief.â??

6. Subsequently, on the basis of evidence led on record by the respective parties, learned Tribunal below, awarded a sum of Rs. 4,87,000/- to the

claimants, vide impugned award, and also held them entitled to interest at the rate of 7.5 percent per annum from the date of filing petition i.e.

28.3.2012 till the date of realisation. Learned Tribunal below also held that since bus bearing No. HP73-2784 was duly insured with the appellant-

Insurance Company vide Ext. R-4 (Policy) and as such, it is liable to indemnify claimants on behalf of respondent No.1. In the aforesaid background,

appellant-Insurance Company has approached this Court in the instant proceedings, praying therein for setting aside the impugned award.

7. I have heard the learned counsel for the parties and gone through the record carefully.

8. Having carefully perused the material available on record, this Court is not persuaded to agree with the contention raised by Mr. Jagdish Thakur,

learned counsel representing the appellant-Insurance Company that claimants, who happen to the legal heirs of deceased driver, were not entitled to

compensation under Section 163 of the Motor Vehicles Act. Mr. Thakur, while Â referring to the evidence available on record made an attempt to

persuade this Court to agree with his contention that accident occurred due to rash and negligent driving of deceased and as such, claimants being his

legal heirs are not entitled to compensation claimed by them under Section 163A of the Act ibid.

9. Hon'ble Apex Court in United India Insurance Co. Ltd. versus Sunil Kumar & Anr, while answering reference i.e. â??Whether in a claim

proceeding under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as â??the Actâ?) it is open for the Insurer to raise the

defence /plea of negligence? â? has categorically held that in the proceedings under Section 163A of the Act, it is not open for the insurance company to raise defence of negligence on the part of claimant. Following paragraphs of aforesaid judgment can be usefully extracted herein:

â??7. As observed in Hansrajbhai V. Kodala (supra) one of the suggestions made by the Transport Development Council was â??to provide

adequate compensation to victims of road accidents without going into long drawn procedure.â? As a sequel to the recommendations made by the

Committee and the Council, Section 140 was enacted in the present Act in place of Section 92A to 92E of the Old Act. Compensation payable

thereunder, as under the repealed provisions, continued to be on the basis of no fault liability though at an enhanced rate which was further enhanced

by subsequent amendments. Sections 140 and 141 of the present Act makes it clear that compensation payable thereunder does not foreclose the

liability to pay or the right to receive compensation under any other provision of the Act or any other law in force except compensation awarded under

Section 163A of the Act. Compensation under Section 140 of the Act was thus understood to be in the nature of an interim payment pending the final

award under Section 166 of the Act. Section 163-A, on the other hand, was introduced in the New Act for the first time to remedy the situation where

determination of final compensation on fault basis under Section 166 of the Act was progressively getting protracted. The Legislative intent and

purpose was to provide for payment of final compensation to a class of claimants (whose income was below Rs.40,000/- per annum) on the basis of a

structured formula without any reference to fault liability. In fact, in Hansrajbhai V. Kodala (supra) the bench had occasion to observe that:

â??Compensation amount is paid without pleading or proof of fault, on the principle of social justice as a social security measure because of ever-

increasing motor vehicle acci- dents in a fast-moving society. Further, the law before insertion of Section 163-A was giving limited benefit to the

extent provided un-der Section 140 for no-fault lia- bility and determination of compen- sation amount on fault liability was taking a long time. That

mis- chief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by afford- ing benefit

to the victims on structured-formula basis. Further, if the question of determining com- pensation on fault liability is kept alive it would result in addi-

tional litigation and complications in case claimants fail to establish liability of the owner of the de- faulting vehicles.â??

8. From the above discussion, it is clear that grant of compensation under Section 163-A of the Act on the basis of the structured formula is in the

nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner

of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically

exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be

introduced by the Insurer and/or to understand the provisions of Section 163A of the Act to be contemplating any such situation would go contrary to

the very legislative object behind introduction of Section 163A of the Act, namely, final compensation within a limited time frame on the basis of the

structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to

understand Section 163A of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under Section 163A of the

Act at par with the proceeding under Section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under Section 163A of the Act it is not open for the

Insurer to raise any defence of negligence on the part of the victim.â??

10. Since in the judgment (supra), Hon'ble Apex Court has categorically held that plea of negligence can not be raised by the insurer in proceedings

under Section 163A of the Act ibid, this Court sees no force in the argument of Mr. Jagdish Thakur, learned counsel representing the appellant-

Insurance Company that the learned Tribunal below committed grave illegality while ignoring the FIR lodged at the time of accident, perusal whereof

clearly reveals that the vehicle in question was being driven rashly and negligently by the deceased at the time of accident. Similarly, no reliance, if

any, can be placed upon Ext. PW-3/A i.e. mechanical examination report, wherein it has been held that accident has not occurred because of

mechanical defect.

11. This court also does not find any force in the argument of the learned counsel representing the appellant-Insurance Company that the learned

Tribunal below has wrongly applied multiplier of 18, while calculating loss of dependency. The Second Schedule to the Motor Vehicles Act provides

for multiplier of 18 in case, age of the deceased is more than 25 years and less than 30 years. Ext. R2 clearly shows that the date of birth of the

deceased was 27.5.1985 and accident has taken place on 10.8.2011, as such, on the date of accident, deceased was well above 25 years of age and

as such, multiplier of 18 has rightly been applied by the learned Tribunal below.

12. Learned counsel for the appellant-Insurance Company has raised another objection that the learned Tribunal below has wrongly awarded a sum of

Rs. 5,000/- under the head of â??loss of estateâ?? whereas same ought to have been Rs. 2,500/- After having gone through the Second Schedule of

the Act, is clear that under the general damages in case of death, a maximum of Rs. 2,500/- can be awarded under the head of loss of estate and as

such, award passed by the learned Tribunal below is modified to this extent only.

13. Consequently, in view of aforesaid modification made herein above, claimants are held entitled to following amounts under various heads:

1. Loss of dependency Rs. 4,75,000/-

2. Loss of consortium Rs. 5,000/-

3. Loss of estate Rs. 2,500/-

4. Funeral charges Rs. 2,000/-

Â Total Rs. 4,84,500/-

14. The amount shall be apportioned amongst the claimants in equal shares.

15. This Court however does not see any reason to interfere with the rate of interest awarded on the amount of compensation and as such, same is

upheld.

16. Consequently, in view of detailed discussion made herein above and law laid down by the Hon'ble Apex Court, present appeal is partly allowed

and Award dated 4.7.2013 passed by the learned Motor Accident Claims Tribunal, Chamba Division, Chamba, (HP) in M.A.C. Petition No. 33 of

2012, is modified to the above extent. Pending applications, if any, are also disposed of.