

(2016) 12 SHI CK 0113
In the High Court Of Himachal Pradesh
Case No : FAO No. 310 of 2012

Smt. Darshan Kaur	Vs	APPELLANT
Smt. Vidya Thakur		RESPONDENT

Date of Decision : 30-12-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 158(6), Section 166(4)

Citation : (2017) 1 ACC 354 : (2017) 1 AnWR 216 : (2017) 1 HimLR 453 :
(2017) 2 TAC 307

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. N.S. Chandel, Advocate, for the Appellants; M/s Sudhir Thakur and Anirudh Sharma, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J. (Oral) - Challenge in this appeal is to judgment and award, dated 12th April, 2012, made by the Motor Accident Claims Tribunal-I, Solan, District Solan, H.P. (for short "the Tribunal") in MAC Petition No. 24-S/2 of 2008, titled as Smt. Vidya Thakur & others v. Shri Raj Kumar and another, whereby compensation to the tune of Rs. 11,30,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization came to be awarded in favour of the claimants and the appellants/owner and driver were saddled with liability (hereinafter referred to as "the impugned award").

2. The claimants have not questioned the impugned award, on any count. Thus, it has attained finality, so far the same relates to them.

3. The owner and driver have questioned the impugned award on the grounds taken in the memo of appeal.

4. Learned Counsel for the appellants/owner and driver argued that the accident was not caused by driver, namely, Raj Kumar and prayed that the impugned award be set aside.

5. The argument is mis-conceived and devoid of any force for the following reasons.

6. The claimants filed a claim petition before the Tribunal for grant of compensation to the tune of Rs. 25,00,000/, as per the break-ups given in the said petition.

7. Precisely, the case of the claimants was that on 21.04.2008, at about 5.50 a.m., driver, namely, Raj Kumar, had driven vehicle-truck bearing registration No. HP-11-B-0299, rashly and negligently and caused the accident, in which deceased Nardev Singh Thakur sustained injuries and succumbed to the same.

8. The respondents filed replies.

9. Following issues came to be framed by the Tribunal:

"1. Whether deceased expired in an accident caused due to the rash and negligent driving of respondent No. 1 while driving the vehicle of respondent No.2? ?..OPP

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

3. Whether the petition is not maintainable? ?.OPR

3-A Whether the petition is bad for nonjoinder of necessary parties, as alleged? ?.OPR

4. Relief."

10. The parties led evidence.

11. The Tribunal, after scanning the evidence, oral as well as documentary, held that driver, namely, Raj Kumar, caused the accident, while driving the offending vehicle, rashly and negligently, at the relevant point of time, in which deceased Nardev Singh Thakur lost his life. Issue No. 1.

12. The claimants have examined HHC Kanshi Ram (PW-2), who stated that FIR (Ext. PW-2/A) was lodged against driver-Raj Kumar and after investigation, final report in terms of Section 173 of the Code of Criminal Procedure was presented against him before the Court of competent jurisdiction. The other evidence, oral and documentary, is on record which is sufficient proof to hold that the accident was outcome of the rash and negligent driving of the driver.

13. Admittedly, appellant No. 1-Smt. Darshan Kaur is the registered owner of the offending vehicle and appellant No. 2-Raj Kumar is her son who was driving the offending vehicle at the relevant point of time. Thus, the Tribunal has rightly determined Issue No. 1.

14. Before I deal with Issues No. 2, I deem it proper to deal with Issues No. 3 & 3-A. Issue No. 3.

15. It was for the respondents/owner and driver to prove how the claim petition was not maintainable, have failed to do so.

16. The Motor Vehicles Act, 1988, for short "the MV Act" has gone through a sea change and sub section (6) to Section 158 and sub section (4) to Section 166 of the MV Act have been added, whereby the Claims Tribunal can treat report of accident forwarded to it under Section 158 (6) of the MV Act as an application for compensation. Accordingly, the findings returned by the Tribunal on Issue No. 3 are upheld. Issue No. 3-A.

17. It was for the respondents/owner and driver to prove how the claim petition was bad for non-joinder of necessary parties. Driver-Raj Kumar has caused the accident and FIR (Ext. PW-2/A) was lodged against him. Thus, the owner and driver were the necessary parties to the claim petition, as discussed herein above. Accordingly, the findings returned by the Tribunal on Issue No. 3-A are upheld.

Issue No. 2

18. The deceased was a TGT teacher and was drawing gross salary to the tune of Rs. 27,000/- per month, as per the salary certificate (Ext. PW-6/A), was 56 years of age at the time of the accident and had to retire at the age of 58 years.

19. Keeping in view the ratio laid down by the Apex Court in Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another, reported in AIR 2009 SC 3104, upheld by a larger Bench of the Apex Court in a case titled as Reshma Kumari & others v. Madan Mohan and another, reported in 2013 AIR (SCW) 3120, which is to be deducted towards the personal expenses of the deceased. Thus, it can be safely said and held that the claimants have lost source of pendency to the tune of Rs. 20,000/-, per month till the age of retirement, i.e., for two years only.

20. The compensation under the head "loss of income" was to be assessed while keeping in view the fact that the deceased had to retire within two years and thereafter for the rest period, the same was to be assessed while keeping in view the pension payable.

21. My this view is fortified by the judgment rendered by the Kerala High Court in case titled T.T. Narayanan and another v. Mrs. P. Bridget and others reported in II (1991) ACC 120 (DB). It is apt to reproduce para 3 of the said judgment herein:

"3. On the date of the occurrence and death deceased had 46 months more service left as headmaster. He was in a pensionable job and he would have drawn pension for fifteen years, namely, till he attains 70 years. The Tribunal computed pay and allowances due for 46 months and the pension due for 15 years and deducted 20% for personal expenses of the deceased and 10% for uncertainties of life and thus arrived at the compensation payable to the claimants. The only submission urged by learned Counsel for the appellants in

this regard is that on account of premature death of U. Vincent, the amount of family pension for the period of 15 years has to be deducted from the amount awarded. This submission appears to be correct. Family would be entitled to maximum family pension of Rs. 150/- per month. Computing this for 15 years and deducting 30% the amount of family pension would be Rs. 18,900/-. This amount has to be deducted from Rs. 1,28,688/- awarded by the Tribunal. The correct quantum payable therefore would be Rs. 1,09,788/-."

22. This Court in FAO No. 171 of 2012, titled as ICICI Lombard General Insurance Co. Ltd v. Smt. Satya Devi & others and another connected matter, decided on 04.11.2016, has laid down the same principle.

23. The multiplier of "7" is applicable in this case while keeping in view of the age of the deceased, other attending circumstances and the 2nd Schedule appended to the MV Act read with the ratio laid down by the Apex Court in the judgments, supra, and the judgment rendered by the Apex Court in case titled as Munna Lal Jain & another v. Vipin Kumar Sharma & others, reported in 2015 AIR SCW 3105.

24. The multiplier of "2" was applicable for assessing loss of dependency/income under the head "loss of salary" and multiplier "5" was applicable, i.e., (after deducting multiplier "2" out of multiplier "7") for assessing loss of dependency/income under the head "loss of pension".

25. The claimants have lost source of dependency and are entitled to compensation to the tune of Rs. 20,000/- x 12 x 2 = Rs. 4,80,000/-, under the head "loss of salary".

26. The Tribunal has rightly held that after retirement, he would not have taken pension less than Rs. 12,000/- per month. 7th is to be deducted keeping in view the 2nd Schedule of the MV Act read with judgments rendered by the Apex Court, supra, the loss of source of dependency comes to Rs.9,000/-. Thus, it can be safely held that the claimants have lost source of dependency to the tune of Rs. 9,000/- x 12 x 5 = Rs. 5,40,000/- under the "loss of pension".

27. The claimants are also held entitled to a sum of Rs. 10,000/- each, i.e. Rs. 40,000/-, under the heads "loss of love and affection", "loss of consortium", "loss of estate" and "funeral expenses".

28. Accordingly, the claimants are held entitled to total compensation to the tune of Rs. 4,80,000/- + Rs. 5,40,000 + Rs. 40,000/- = Rs. 10,60,000/- with interest at the rate of 7.5% per annum as awarded by the Tribunal.

29. Accordingly, the impugned award is modified as indicated herein above.

30. The respondents/owner and driver are directed to deposit the awarded amount within eight weeks from today. On deposit, the same be released in favour of the claimants through payees' account cheque or by depositing the same in their accounts.

31. The appeal is disposed of accordingly.

32. Send down the records after placing a copy of the judgment on the Tribunal's file.