
(2016) 03 SHI CK 0194
In the High Court Of Himachal Pradesh
Case No : FAO No. 529 of 2009

Smt. Tripta Devi	Vs	APPELLANT
General Manager, HRTC		RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) ILRHP 401

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Appellant; Mr. Vijay Verma, Advocate, for the Respondent Nos. 1 and 2; Nemo, for the Respondent Nos. 3 and 4

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral)—There is no representation on behalf of respondents No. 3 and 4. Hence, they are set ex-parte.

2. Challenge in this appeal is to the judgment and award, dated 1st September, 2009, made by the Motor Accident Claims Tribunal, Una, Himachal Pradesh (for short "the Tribunal") in M.A.C. Petition No. 12 of 2006, titled as Smt. Tripta Devi v. General Manager H.R.T.C. Shimla and others, whereby compensation to the tune of Rs. 65,000/- with interest @ 8% per annum from the date of institution of the claim petition till its realisation came to be awarded in favour of the claimant (for short "the impugned award").

3. This appeal is on the Board of this Court for the last more than seven years.

4. The appellant-claimant invoked the jurisdiction of the Tribunal by the medium of claim petition for grant of compensation to the tune of Rs. ten lacs, as per the break-ups given in the claim petition on the ground that she became the victim of the motor vehicular accident, which was caused by the driver, namely Jarm Singh, while driving HRTC bus, bearing registration No. HP-20 A-9005, rashly and

negligently on 1st February, 2006, at about 4.15 P.M. near Village Katohar Kalan on Amb-Una National Highway, in which Ekta Sharma and Inderjeet Sharma sustained injuries and succumbed to the injuries.

5. The respondents in the claim petition resisted the claim petition on the grounds taken in the respective memo of objections.

6. On the pleadings of the parties, following issues came to be framed by the Tribunal on 3rd May, 2006:

"1. Whether Smt. Ekta Sharma died in a motor accident caused by rash and negligent driving of the bus (No. HP-20A-9005) by Jarm Singh (respondent No. 3) at the point known as Katohar Kalan Morh on February 1, 2006? OPP

2. Whether the petitioner is entitled to compensation. If so, to what amount and from whom? OPP

3. Whether the accident was attributable to the husband of the deceased? OPR-1&2

4. Whether the petition is bad for non-joinder of the owner and the insurer of the motorcycle which was alleged being driven by the husband of the deceased? OPR-1 to 3

5. Relief."

7. The appellant-claimant examined HC Kusha Dutt as PW-1, Satpal as PW-3, Narinder Kumar as PW-4, Dr. M.K. Pathak as PW-5 and the claimant herself appeared in the witness box as PW-2. The insurer and insured have not led any evidence. However, driver-Jarm Singh appeared in the witness box as RW-1.

8. I have perused the claim petition, the record and the impugned award and am of the considered view that the Tribunal has wrongly made the discussion and the conclusion.

Issue No. 1:

9. All the witnesses, i.e. Tripta Devi, Satpal and Narinder Kumar, have deposed that the offending vehicle was being driven by driver-Jarm Singh rashly and negligently on 1st February, 2006 at about 4.15 P.M. at Katohar Kalan, in which Ekta Sharma and her husband, Inderjeet Sharma, lost their lives. FIR was lodged against driver-Jarm Singh (respondent No. 3 in the claim petition) and final report in terms of Section 173 of the Code of Criminal Procedure (for short "CrPC") was filed against him under Section 279 and 304-A of the Indian Penal Code (for short "IPC") before the Court of competent jurisdiction.

10. Having said so, it can be safely said and held that the claimant has discharged the onus by, prima facie, proving that the driver, namely Jarm Singh, has driven the offending vehicle rashly and negligently at the time of the accident and caused the accident, in which Ekta Sharma sustained injuries and succumbed to the injuries. Accordingly, the findings returned by the Tribunal on

issue No. 1 are set aside and the same is decided in favour of the claimant and against respondents No. 1 and 2.

11. Before I deal with issue No. 2, I deem it proper to determine issues No. 3 and 4.

Issue No. 3:

12. Respondents No. 1 and 2 in the claim petition had to prove that the accident was caused by the husband of deceased-Ekta Sharma, have not led any evidence, thus, have failed to discharge the onus. Even otherwise, in view of the findings returned on issue No. 1, the findings returned by the Tribunal on issue No. 3 are set side and the same is decided against respondents No. 1 & 2 and in favour of the claimant.

Issue No. 4:

13. It was for the respondents in the claim petition to prove that the claim petition was suffering from mis-joinder and non-joinder of necessary parties, have not led any evidence.

14. Moreover, the Motor Vehicles Act, 1988 (for short "MV Act") has gone through a sea change in the year 1994 and in terms of Sections 158 (6) and 166 (4) of the MV Act, even the police report can be treated as a claim petition. So, claim petition cannot be dismissed on the ground of mis-joinder and non-joinder of necessary parties. Thus, it is held that the claim petition was maintainable and not suffering from any mis-joinder and non-joinder of necessary parties. Accordingly, issue No. 4 is decided in favour of the claimant and against respondents No. 1 to 3.

15. I wonder how the Tribunal has decided all the issues against the claimant and in favour of the respondents in the claim petition in one breath and in the second breath, has awarded compensation.

16. It is worthwhile to record herein that the Tribunal has decided almost all the issues against the claimant, but while deciding issue No. 2, has granted compensation. It is not known as to what research the learned Judge has undertaken.

17. Be it as it is, admittedly, deceased-Ekta Sharma was the daughter of the claimant-Tripta Devi. It is also admitted that she was married to Inderjeet Sharma, who was driving motorcycle at the time of the accident, which was hit by the offending vehicle and both of them have lost their lives in the said accident.

18. The question is - whether natural mother can claim compensation in lieu of the death of her daughter, who was married but without any child? The answer is in the affirmative for following reasons:

19. The relationship of a daughter and mother remains the same even after the

daughter gets married. Shoe wearer knows where the shoe pinches. It is known to everyone that daughter is always affectionate to her parents and she takes care of her parents even after her marriage. The mother is deprived of the love and affection of her daughter and source of hope and help in her old age. Money cannot be a substitute for the loss of a daughter.

20. In the instant case, the husband and the wife, i.e. the couple, have died leaving behind only mother and no other legal representative.

21. The Tribunal, though, has awarded the compensation, but the same is very meagre. Even as a housewife, the deceased would have been earning not less than Rs. 3,000/- at the relevant point of time and it can be safely said and held that the claimant has suffered loss of source of dependency to the tune of Rs. 1500/- per month.

22. Admittedly, the age of the deceased was 25 years at the time of the accident. Thus, the multiplier of "15" is just and appropriate in view of the ratio laid down by the Apex Court in the case titled as Sarla Verma (Smt) and others v. Delhi Transport Corporation and another, reported in (2009) 6 Supreme Court Cases 121, which has been upheld by a larger Bench of the Apex Court in Reshma Kumari & Ors. v. Madan Mohan & Anr., reported in 2013 AIR SCW 3120, read with the Second Schedule appended with the MV Act.

23. Having said so, the claimant is held entitled to compensation to the tune of Rs. $1500 \times 12 \times 15 = \text{Rs. } 2,70,000/-$ with interest as awarded by the Tribunal.

24. Having glance of the above discussions, the impugned award is modified, as indicated herein above, and the appeal is disposed of accordingly.

25. The enhanced awarded amount be deposited before the Registry of this Court within six weeks. On deposition, the awarded amount be released in favour of the claimant strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in her bank account.

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