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**(2014) 03 SHI CK 0094**  
**In the High Court Of Himachal Pradesh**  
**Case No : FAO (MVA) No. 393 of 2006**

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| The New India Assurance Company Ltd. | APPELLANT  |
| Vs                                   |            |
| Bandana Devi and Others              | RESPONDENT |

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**Date of Decision :** 28-03-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173  
Motor Vehicles Act, 1988 — Section 166

**Citation :** (2014) 03 SHI CK 0094

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

**Bench :** Single Bench

**Advocate :** Praneet Gupta, Advocates for the Appellant; Lalit K. Sharma and Maan Singh, Advocates for the Respondent

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## Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. Challenge in this appeal is to the award dated 31st August, 2006, made by the Motor Accidents Claims Tribunal (II), Fast Track Court, Hamirpur, (H.P.) (hereinafter referred to as "the Tribunal") in Claim Petition No. 49 of 2003, titled as Bandana Devi & others versus The New India Assurance Company Ltd. & others, whereby compensation to the tune of Rs. 7,71,548/- came to be awarded in favour of the claimants-respondents No. 1 to 3 and against the appellant-insurer, within a period of 30 days from the date of the award, failing which, the appellant-insurer was held liable to pay interest @ 6% per annum to the claimants-respondents No. 1 to 3, till its realization, (for short, the "impugned award"), on the grounds taken in the memo of appeal.

Brief Facts:

2. It is necessary to give a brief summary of the case, the womb of which has given birth to the present appeal.

3. The claimants-respondents No. 1 to 3 have invoked jurisdiction of the Tribunal, in terms of the mandate of Section 166, Chapter-XII, contained in Motor Vehicles

Act, 1988, (for short "the Act"), for grant of compensation to the tune of Rs. 15,00,000/-, as per the breakups given in the claim petition, on the ground that their sole bread-earner, namely, Vijay Kumar, became victim of the vehicular accident, which was caused by one Rakesh Kumar, driver, while driving offending vehicle-Tractor bearing registration No. HP-21-1970, rashly and negligently, on 24th July, 2003, on main road near Government School, Jalari, Nadaun, at about 8.40 p.m. In this accident, Vijay Kumar sustained multiple injuries and succumbed to the injuries. The driver ran away from the spot. FIR No. 140/2003 as registered in Police Station, Nadaun, District Hamirpur.

4. The driver and owner-insured, i.e. respondents No. 4 & 5, respectively, filed joint reply to the claim petition, in which they have stated that driver-respondent No. 4 had not caused the said accident, but they were roped, rather, implicated in the case, falsely. Appellant-insured has also filed reply to the claim petition and stated that no vehicular/traffic accident occurred on the said date. But alternatively, they have also stated that the accident was caused by driver, namely, Rakesh Kumar, who was not having an effective and valid driving licence to drive the offending vehicle-tractor on the date of accident. It is apt to reproduce para-5 of the preliminary objections of the reply filed by appellant-insurer hereinbelow:

"5. That even otherwise the driver of tractor bearing No. HP-21-1970 was not having any valid and effective driving licence on 24.7.03 and the said vehicle was deliberately handed over to said driver intentionally and knowingly."

5. The Tribunal framed the following issues on 3.5.2004:

"1. Whether respondent No. 2 while driving tractor bearing No. HP-21-1970 on 4.7.2003, hit Shri Vijay Kumar, causing injuries, resulting in his death as alleged? OPP

2. If issue No. 1 is proved, whether petitioner is entitled for compensation of what amount and from whom? OPP

3. Whether petition is not maintainable? OPR. 1

4. Whether the petition is collusive as alleged? OPR. 1

5. Whether respondent No. 2 was holding respective valid driving licence at the time of accident on 24.7.2003 as alleged? OPR. 1

6. Relief"

6. The claimants-respondents No. 1 to 3 have examined seven witnesses in support of their case and claimant Smt. Bandana Devi also appeared in the witness box. Respondents in the claim petition i.e. insurer, driver and insured-owner were asked to lead evidence, but they failed to do so. However, driver, respondent No. 4, Rakesh Kumar appeared in the witness box and tendered his own statement. The evidence of the respondents in the claim petition was closed on 17.5.2006.

#### Issue No. 1

7. The Tribunal, after examining the pleadings and scanning the evidence on record, held that the claimants have proved that driver-Rakesh Kumar (respondent No. 4) had driven the offending vehicle-tractor, rashly and negligently, on 24th July, 2003, on the main road near Government School, Jalari, Nadaun and hit the scooter, on which the deceased was riding, who sustained injuries and succumbed to the injuries. There is no rebuttal to this evidence. However, the driver of the tractor, namely, Rakesh Kumar (respondent No. 4) appeared in the witness box and stated that he had not caused the said accident. FIR No. 140/2003 was lodged against him and final report in terms of Section 173 of the Code of Criminal Procedure was also presented in the Court of competent jurisdiction, which is not disputed. Thus, the Tribunal has rightly returned findings on issue No. 1 and the same are accordingly, upheld.

8. I deem it proper to discuss Issue No. 2, later.

#### Issue No. 3

9. Appellant-insurer had to lead evidence and discharge the onus to prove this issue, but they have failed to do so, this was decided by the Tribunal against the insurer. However, I have gone through the record and find that the claim petition in terms of Section 166 of the Act is maintainable. Accordingly, the findings returned by the Tribunal on this issue are upheld.

#### Issue No. 4

10. The appellant-insurer had to prove how the claim petition was collusive, but there is not an iota of evidence to prove this issue. Thus, the findings returned by the Tribunal on this issue, are upheld.

#### Issue No. 5

11. The onus to prove this issue was on the appellant-insurer, but they have failed to lead any evidence to prove this issue. However, the driver-respondent No. 4 appeared in the witness box and tendered in evidence his driving licence Ext. RW-1/A. The appellant-insurer has not led any evidence in rebuttal and also failed to prove that the insured-owner has committed any breach of the policy conditions. Thus, the appellant-insurer has no ground to seek exoneration. Accordingly, the findings returned by the Tribunal on this issue, are also upheld.

#### Issue No. 2

12. The claimants-respondents No. 1 to 3 have pleaded in the claim petition that the deceased was earning Rs. 10,000/- per month and proved by leading oral as well as documentary evidence that the loss of monthly income was to the tune of Rs. 8,816/- per month, which has remained un-rebutted. They have also proved on record salary certificate Ex. PW-5/A, which is sufficient to hold that the monthly income of the deceased was Rs. 8,816/- at the particular point of time. After deduction as pocket expenses of the deceased, the Tribunal held that the

claimants have lost source of dependency to the tune of Rs. 5,292/- per month and applied the multiplier of "12".

13. Keeping in view the ratio laid down by the Apex Court in case titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and upheld by a larger Bench of the Apex Court in case titled as Reshma Kumari and Others Vs. Madan Mohan and Another, , 1/4th of the monthly income of the deceased was to be deducted as his personal expenses and 3/4th of the income i.e. Rs. 6,612/- was to be held as loss of dependency to the claimants. However, the Tribunal has held that the deceased was spending 40% of his salary as his personal expenses, which I reluctantly uphold. Accordingly, the findings returned by the Tribunal that claimants have lost source of dependency to the tune of Rs. 5,292/-, are upheld.

14. The claimants-respondents No. 1 to 3 have mentioned in the claim petition the age of the deceased as 37 years at the time of accident and pleaded that claimant Smt. Bandana Devi is the widow and other two claimants are minor son and daughter of the deceased. I am of the considered view that multiplier of "12" is just and proper multiplier applicable in this case.

15. The Tribunal has also rightly awarded Rs. 2,000/-, Rs. 5,000/- and Rs. 2,500/- under the heads of funeral expenses, loss of consortium and loss of estate, respectively.

16. The rate of interest i.e. @ 6% awarded is meager, which is reluctantly upheld

17. The factum of insurance is not denied. The defence taken by the appellant-insurer, as discussed hereinabove, has fallen to the ground and it has failed to prove that the insured-owner has committed any breach of the policy conditions and rightly came to be saddled with the liability.

18. The claimants-respondents No. 1 to 3 are in the lis right from the year 2003, who were driven by the appellant-insurer to this Court in the year 2006 and the long pendency of the matter till today, has added to their miseries, sufferings and agony, which has virtually defeated the purpose of granting compensation within time. The claimants are waiting for justice for the last eleven years, which is a travesty of justice and against the concept of welfare legislation.

19. It is the duty of Tribunals/Courts to keep in mind that grant of compensation in terms of mandate of Section 166, contained in Chapter XII of the Act is a welfare legislation and claimants should not be thrown out from the Court on the flimsy grounds.

20. Having said so, I deem it proper to award costs in favour of the claimants-respondents No. 1 to 3 and against the appellant-insurer, which is quantified at Rs. 15,000/-.

21. The Registry is directed to release the awarded amount in favour of the claimants, if deposited, strictly as per the terms and conditions contained in the

impugned award.

22. The insurer is directed to deposit the entire awarded amount, if not already deposited, with costs before the Registry of this Court, within a period of one month from today.

23. Send down the records after placing copy of the judgment on record.

24. The impugned award is upheld and the appeal is accordingly, dismissed.