

(1989) 06 SHI CK 0041

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No"s. 75 and 77 of 1981

The Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Mast Ram and Others
 Mast Ram and Another Vs Hari
Ram and Others

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151, 152
Motor Vehicles Act, 1939 — Section 110A, 110B, 110C, 110D, 96

Citation : (1989) ACJ 1120 : (1989) 2 ShimLC 227

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Pratima Malhotra, in F.A.O. MVA No. 75 of 1981 and K.D. Sood, in F.A.O. MVA No. 77 of 1981, for the Appellant; K.D. Sood in F.A.O. (MVA) No. 75 of 1981, Pratima Malhotra in F.A.O. (MVA) No. 77 of 1981 and Prem Goel, for the Respondent

Judgement

Bhawani Singh, J.—These appeals F.A.O. (M.V.A.) No. 75 of 1981, The Oriental Fire and General Insurance Company Limited v. Shri Mast Ram and Ors.; and F.A.O. (M.V.A.) No. 77 of 1981 Shri Mast Ram and Anr. v. Hari Ram and Ors. arise out of the same award of the Motor Accident Claims Tribunal, Simla, therefore, they are being taken up together for decision by a common judgment. By F. A. O. (M. V. A.) No. 75 of 1981, the aware has been challenged by the Oriental Fire and General Insurance Company Limited on merits whereas by F. A. O. (M. V. A.) No. 77 of 1981, the same is challenged by the claimants praying for more compensation and award of interest from 12-11-1976, the date of the filing of the claim petition till the date of the realisation of the amount. Let brief facts of the case be stated thus.

2. The claimants are father and mother of deceased Prem Chand (18 1/2), a student of 9th Class On September 26, 1976, many people were watching Ramleela during the night at Taradevi. Truck No. HIM 4495, driven by Respondent No. 3, rashly and negligently, came on the wrong side of the road

and struck against truck HRE 1991 which further gave a push to Bus No. HIL 3793. The deceased was smashed in between truck No. HRE 1991 and Bus No. HIL 3793 with the result that the deceased died of the injuries he sustained due to this accident. It is alleged that the accident occurred due to the negligent and rash driving of Respondent No. 3 who was coming at a great speed under intoxication and on the wrong side of the road. The claim petition for Rs. 40,000 was moved. The deceased was the only son of the claimants, besides three daughters. The claim was contested by the Appellant and Respondents Nos. 4 and 6. Respondent No. 3, the driver, and Respondent No. 5, have been proceeded ex parte. The protest of Respondent No. 4 was that the accident occurred on account of the wrong parking of truck No. HRE 1991 and Bus HIL 3793 on the National Highway as they had blocked the free flow of all the vehicles during the night on the National Highway and the road was further narrowed by the people who had gathered there to witness Ramleela. The deceased was neither hit nor received injuries directly from the truck of the Respondent. In fact, he received the same due to the fact that he was witnessing Ramleela from the roof of the bus from where he fell down and that truck No. HIL 4495 was neither being driven rashly or negligently nor under the influence of intoxication by the driver.

3. The Appellant took almost the same stand that was taken by the owner of the truck as narrated above.

4. The Himachal Pradesh Road Transport Corporation, Respondent No. 6, although admitted the ownership of Bus HIL 3793, but asserted that the bus was not parked on the wrong side of the road and that there was no contributory negligence on their part for the aforesaid accident. Rather it is stated that the accident took place due to the fast and negligent driving of the truck No. HIM 4495. The parties led their evidence.

5. Shri Mast Ram (PW 1) is the father of the deceased. He states that the deceased was his only son. He was 18 years of age. He used to assist him in his agricultural operations after his schooling. He was the only person on whom he could have depended in his old age as the deceased was his only son. Due to his death, he suffered a great shock and mental torture. The deceased used to earn about Rs. 200 per month. The deceased used to carry vegetables from the village to Simla for sale and used to earn Rs. 5 for the same. He used to collect wood from the jungle also.

6. Shri Mohan Singh (PW 2) is an eye-witness to the occurrence. He states that the offending vehicle was coming at a very high speed. The driver blew no horn. Many people had collected to watch Ramleela. The place was well lighted. The truck driver of the truck in question did not reduce the speed. The other two vehicles were already parked on the left side of the road if one goes to Kalka from Simla. The offending vehicle struck against the stationary truck which again hit the bus and the deceased was crushed in between these two vehicles which were already parked on the road. At the place of the accident, the road was very

wide, about 40 feet in width and he had seen the vehicle coming from a distance of about 150 feet and it was being driven at a speed of about 80 km. per hour and that with the impact of the truck, the bus was pushed to a distance of about 15/20 feet.

7. Shri Gopal Krishan (PW 3) also states that there was sufficient place for the passing of one vehicle on the road. The deceased was not standing on the roof of the bus but was sitting on a parapet.

8. Dr. Mansha Devi Dhawan (PW 4) performed the postmortem examination of the dead body of the deceased on 27-9-1976 at 4 p.m. and found the following injuries on his person:

1. He was average built young man, and had the following injuries:

(i) Gross longitudinal lacerated wound almost extending from middle of right thigh to about 3 below the right knee joint, and almost covering whole of the lateral aspect of the thigh with extensive lacerations and exposure of muscles and loss of skin. Size of the wound was 9" x 4". Bleeding was present. This injury was on the right leg.

(ii) Linear lacerated wound irregular with retracted skin on the postero-medial aspect of the left knee joint region 5" x 2"x 1/2" bleeding. This injury was on the left leg.

(iii) Clean lacerated wound over the left thigh lower 3rd on the intero-medial aspect 2"x 1" x 1/2" bleeding plus plus. This injury is also on the left leg.

(iv) Clean lacerated wound over the Chin 1-1/2" x1" bleeding plus plus.

Examination of scalp, skull, vertebrae, membranes of the brain, brain and spinal cord, all normal. No injury. No evidence of any fracture.

Examination of the different viscerae i. e., Pleurae, lungs, heart, larynx and trachea and ribs. They are all normal. No evidence of fracture.

Stomach intestines, liver, spleen, kidneys and bladder all normal.

There was compound fracture lower end right/femur.

9. The Doctor has opined that the cause of the death was crush injury of right thigh with severe haemorrhagic shock.

10. Shri Manohar Lal (RW 1), produced by the Respondents, has not said anything material against the claimants. His statement is of no help to the Respondents, rather it indicates that 300/400 persons were seeing Ramleela at that time

11. Shri Ram Prakash (RW 2) also states that 400/500 persons witnessed Ramleela on that night. He further states that vehicles could cross easily where the truck and the bus were parked and that the road where the accident took

place was straight and there was no curve and the width of the road was about 40 feet

12. Now, coming to the issue of compensation, although the Appellant has challenged the award of the Tribunal on merits, but it has not been specifically pointed out as to how and on what aspect the same suffers from any vice of illegality. u/s 96 of the Motor Vehicles Act, awards of Motor Accident Claims Tribunal can be challenged on specific grounds and in view of the these provisions, neither the quantum of compensation nor the merits of the award can be challenged by the insurer. The Appellant has filed an application (C.M.P. No. 2170 of 1981 in F. A. O. No. 75 of 1981) under Sections 151, 152 and Order VI Rule 17 of the CPC read with Sections 96 and 110-A to 110-D of the Motor Vehicles Act to allow to challenge the award on all grounds open to the insurer. However, no arguments have been addressed on this aspect of the matter. Even otherwise, the same cannot be done by the Appellant as it was a party before the Tribunal and it has duly contested the claim alongwith the insured. The application, aforesaid, is not tenable and is, therefore, disallowed. In addition to this, the claimants have filed an application (C. M. P No. 73 of 198V in F. A. O. No. 77 of 1981) under Order 6 Rule 17 read with Section 151 of the CPC urging therein to allow amendment of the claim petition so as to enhance the claim amount from Rs. 40,000 to Rs. 80,000. This appears to be the result of some anticipated objection by the Appellant in F. A .O. No. 75 of 1981 to the effect that the Motor Accident Claims Tribunal has allowed compensation (Rs. 48,000) more than the one claimed by the claimants, which is not admissible In opposition to this application, the owner of the vehicle (Respondent No. 2) and insurer have, inter alia, asserted that the Tribunal has already assessed the compensation in accordance with law and facts of this case.

13. In my view, the compensation to be allowed by the Court or the Tribunal is just compensation arrived at on the basis of the pleadings of the parties and evidence adduced in support of the same and not any compensation whatever claimed by a claimant. Therefore, in order to arrive at "just compensation" in a particular case, the exact amount has to be assessed and established by the Tribunal or the Court in a case before it. Hence it can be said that irrespective of the claim of Rs. 40,000 in this case, the court has awarded Rs. 48,000 which can be considered to be the just compensation in the case and hence it cannot be said that the awarded amount is unreasonable, arbitrary and against the evidence on record. The application under Order 6 Rule 17 of the CPC was not pressed by Shri K. D. Sood, learned Counsel for the claimants, and the same is, therefore, rejected. The whole emphasis was directed towards the payment of interest on the awarded amount from the date of the claim application to the date of the actual payment.

14. Shri K. D. Sood submitted that the payment of interest has become a rule and the award deserves to be modified to this extent by this Court. Mrs. Pratima Malhotra and Shri Prem Goel, who appear for the Insurance Company and the

owner of the vehicle, oppose the payment of interest to the claimants. Assistance from Smt. Gulab Devi Sohaney Vs. Govt. of Madhya Pradesh and Another, was sought to support this submission. I am not impressed by this submission of the learned Counsel in view of the decision of the Supreme Court in Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, which decision was followed by the same Court in Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others, Both these judgments were followed by the High Court of Madhya Pradesh in Devji and Others Vs. Anwarkhan and Others, In ail these decisions, interest at the rate of 12 per cent per annum has been allowed to the claimants.

15. In view of the latest position of law on this aspect of the matter, the decision cited by Mrs. Pratima Malhotra, learned Counsel for the Insurance Company, is not applicable. Equally untenable is the plea of the Insurance Company that the claim for interest cannot be allowed to be raised for the first time in appeal There is no such prohibition anywhere against raising such a contention at the appellate stage. Even if such a plea was not raised before the Tribunal or the Tribunal had not allowed interest to a claimant, in the absence of such a plea having been raised, the appellate Court could allow such a plea and grant relief accordingly.

16. No other submission and point was argued by any of the learned Counsel appearing for the parties.

17. In view of the aforesaid examination of the matter, there is no merit in Appeal No. F. A. O. (M. V. A) No. 75 of 1981, The Oriental Fire and Genera) Insurance Company Limited v. Shri Mast Ram and Ors. and the same is rejected without costs.

18. F. A. O. (M. V. A.) No. 77 of 1981, Shri Mast Ram and Anr. v. Hari Ram and Ors. is allowed to the extent that the claimants will be paid interest at the rate of 12 per cent per annum on the awarded amount from 12-11-1976 till the same was deposited before the Tribunal or Court for payment to the claimants. The amount of interest be deposited in this Court within a period of two months from today failing which further interest at the rate of 12 per cent per annum will accrue on this amount as well after the expiry of the period of two months, as aforesaid. No costs.