

(2015) 08 SHI CK 0062
In the High Court Of Himachal Pradesh
Case No : FAOs Nos. 96, 97 and 110 of 2009

Udesh Kumar and Others

APPELLANT

Vs

Dhan Prakash and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166
Penal Code, 1860 (IPC) — Section 279, 304-A, 337

Citation : (2015) 08 SHI CK 0062

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

Bench : Single Bench

Advocate : B.S. Chauhan, Senior Advocate and Vaibhav Tanwar, for the Appellant; Dinesh Thakur, vice and N.S. Chandel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, C.J—All these appeals are outcome of one vehicular accident, thus, I deem it proper to determine all the three appeals by this common judgment.

2. Subject matter of these appeals is the judgment and award, dated 06.09.2008, made by the Motor Accident Claims Tribunal (II), Shimla (for short "the Tribunal") in the respective claim petitions, whereby compensation came to be awarded in favour of the claimants, against the respondents and the insurer was saddled with liability (for short "the impugned awards").

3. The insurer and the driver-cum-owner-insured of the offending vehicle have not questioned any of the impugned awards on any count, thus, have attained finality so far these relate to them.

4. The claimants in all the three claim petitions have questioned the impugned awards on the ground of adequacy of compensation.

5. In order to determine the issue, it is necessary to give flashback of the facts of the case, the womb of which has given birth to the appeals in hand.

6. It is averred in the claim petitions that the driver-cum-owner-insured, namely Shri Dhan Prakash, while driving the offending vehicle, i.e. Balero Camper, bearing registration No. HP-63-0137, rashly and negligently, on 14.11.2004, at about 12.05 P.M., near Charo Bag, caused the accident in which two persons, namely Shri Udesb Kumar and Smt. Sulekha, sustained injuries and a six years" old boy, namely Master Lakshay Kumar, sustained injuries and succumbed to the injuries.

7. The claimants filed separate claim petitions in terms of Section 166 of the Motor Vehicles Act, 1988 (for short "the MV Act") before the Tribunal and sought compensation on the grounds taken in the respective claim petitions.

8. The respondents, i.e. the driver-cum-owner-insured and insurer of the offending vehicle, resisted all the three claim petitions on the grounds taken in the respective memo of objections.

9. Similar set of issues came to be framed in all the three claim petitions except issue No. 1. Thus, I deem it proper to reproduce the issues framed by the Tribunal herein:

10. Parties have led evidence.

11. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have not proved the rash and negligent driving of the offending vehicle, but has awarded compensation under the head "No Fault Liability" in terms of Section 140 of the Motor Vehicles Act, 1988 (for short "MV Act").

12. I have gone through the record.

Issues No. 1 and 5:

13. Both these issues are interdependent, thus, are being decided together.

14. Admittedly, FIR No. 90 of 2004 was lodged against the driver of the offending vehicle, was tried before the Court of competent jurisdiction, was convicted under Sections 279, 337 and 304-A of the Indian Penal Code (for short "IPC"), which was questioned by the medium of appeal before the Court of competent jurisdiction and the driver was acquitted by giving the benefit of doubt.

15. The Tribunal, while discussing the evidence in the impugned award has held that the claimants have failed to prove the rash and negligent driving on the part of the driver of the offending vehicle. The reasoning given by the Tribunal is trash for the following reasons:

16. Admittedly, FIR was lodged against the driver of the offending vehicle, who was convicted by the trial Court and thereafter acquitted by the Appellate Court by giving the benefit of doubt. The copy of FIR is Ext. PW-3/A and the copy of investigation report is Ext. RW-6/A, which do disclose that, prima facie, the driver of the offending vehicle had driven the offending vehicle rashly and

negligently at the time of the accident. The driver-cum-owner, namely Shri Dhan Prakash, has not questioned lodging of the FIR before the trial Court.

17. In the given circumstances, how it can be said that the claimants have failed to prove the rash and negligent driving of the offending vehicle by the driver-cum-owner, Shri Dhan Prakash. In one breath, the Tribunal has decided issue No. 1 against the claimants and in the second breath, has decided issue No. 5 against the respondents.

18. The insurer-respondent No. 2 in the claim petition has specifically pleaded that the accident was outcome of the contributory negligence. It is apt to reproduce para 5 of the reply filed by the insurer-respondent No. 2 in the claim petition:

"22. That there are two vehicles involved in the accident and as such there is contributory negligence on the part of both the drivers. Both the drivers driving the vehicles involved in accident were driving in a rash and negligent manner. Hence the replying respondent is not liable to indemnify the respondent No. 1."

19. I have examined the record and am of the considered view that the claimants have, prima facie, proved by leading evidence that the driver-cum-owner of the offending vehicle had driven the offending vehicle, i.e. Balero Camper, bearing registration No. HP-63-0137, rashly and negligently on 14.11.2004, at about 12.05 P.M. at place Charo Bag and caused the accident, in which Shri Udesb Kumar and Smt. Sulekha sustained injuries and Master Lakshay Kumar sustained injuries and succumbed to the injuries.

20. Having said so, the findings returned by the Tribunal on issues No. 1 and 5 are set aside and are decided in favour of the claimants and against the respondents.

Issues No. 3 and 4:

21. It was for the insurer to prove that the driver-cum-owner of the offending vehicle was not having a valid and effective driving licence and the same was being driven without registration-cum-fitness certificate, route permit, etc., has not led any evidence, thus, has failed to discharge the onus. Accordingly, both these issues are decided in favour of the claimants and against the respondents.

Issue No. 2:

22. Admittedly, the offending vehicle was insured and there was no dispute about the factum of insurance.

23. On the last date of hearing, Mr. Narender Sharma, learned counsel appearing on behalf the insurer, was directed to seek instructions. Today, he stated, on instructions, that the insurer is ready to pay compensation to the tune of Rs. 2,50,000/- in lump-sum in addition to the amount already awarded in all the claim petitions, to which the learned senior counsel for the appellant(s) is averse. Thus, I deem it proper to determine the compensation to be awarded in each

case separately.

FAO No. 96 of 2009:

24. The Tribunal has awarded a meager amount of Rs. 12,500/- under the head "No Fault Liability" in favour of the claimant-injured, namely Shri Udesch Kumar.

25. Claimant-injured-Udesch Kumar has sustained injuries, was taken to Civil Hospital Kotkhai and thereafter was referred to IGMC, Shimla, where he remained admitted, has spent money on his treatment, which fact is borne out from the record, but, unfortunately, the Tribunal has not discussed the same.

26. The disability certificate of the claimant-injured-Udesch Kumar is Ext. PW-1/A on the file, which does disclose that he has suffered permanent disability to the extent of 5% and has undergone pain and sufferings.

27. Thus, I deem it proper to award compensation to the tune of Rs. 50,000/- in lump-sum in favour of the claimant-injured-Udesch Kumar, with interest @ 7.5% per annum from the date of the claim petition till its finalization in addition to the amount already awarded in terms of the impugned award.

FAO No. 110 of 2009:

28. The Tribunal has awarded a meager amount of Rs. 12,500/- under the head "No Fault Liability" in favour of the claimant-injured, namely Smt. Sulekha, despite the fact that she has suffered 45% permanent disability.

29. Claimant-injured-Sulekha has sustained injuries, was taken to Civil Hospital Kotkhai and thereafter was immediately referred to IGMC, Shimla, where she remained admitted in Ortho Department.

30. The disability certificate of the claimant-injured-Sulekha is Ext. PW-4/A, which does disclose that the claimant-injured-Sulekha has undergone pain and sufferings and has suffered 45% permanent disability. Dr. Ramesh Chauhan (PW-4) has given details as to what is the effect of the said injury, which has not only affected the earning capacity of the claimant-injured-Sulekha, but has also shattered her physical frame. The claimant-injured-Sulekha is not in a position to maintain her matrimonial home due to the injury suffered by her.

31. In the given circumstances, I deem it proper to exercise guess work and award Rs. 50,000/- under the head "pain and sufferings, Rs. 50,000/- under the head "treatment charges" and Rs. 1,00,000/- under the head "loss of income".

32. Viewed thus, the claimant-injured-Sulekha is held entitled to compensation to the tune of Rs. 50,000/- + Rs. 50,000/- + Rs. 1,00,000/- = Rs. 2,00,000/- with interest @ 7.5% per annum from the date of the claim petition till its finalization in addition to the amount already awarded in terms of the impugned award.

FAO No. 97 of 2009:

33. The Tribunal has awarded a meager amount of Rs. 25,000/- under the head "No Fault Liability" in favour of the claimants on account of death of their son.

34. The unfortunate parents have lost their six years" old son in the accident, who, after attaining the age of eighteen years, would have been earning. He was the source of hope and help to his parents in their old age.

35. By guess work, it can be safely said that the deceased would have been earning not less than Rs. 4,500/- per month after attaining the age of majority. Applying the multiplier method in terms of the Second Schedule appended with the MV Act read with the ratio laid down by the Apex Court in the case titled as Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 and upheld by a larger Bench of the Apex Court in the case titled as Reshma Kumari and Others Vs. Madan Mohan and Another, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 , multiplier of "13" is just and appropriate. 50% is to be deducted towards his personal expenses being a bachelor. Thus, it is held that the claimants have suffered loss of dependency to the tune of Rs. 2,000/- per month.

36. Viewed thus, the claimants are held entitled to compensation to the tune of Rs. 2,000/- x 12 x 13 = Rs. 3,12,000/- with interest @ 7.5% per annum from the date of the claim petition till its finalization in addition to the amount already awarded in terms of the impugned award.

37. The insurer is directed to deposit the enhanced amount in all the claim petitions before this Registry within eight weeks. On deposition of the same, the Registry to release the same in favour of the claimants after proper identification.

38. Having glance of the above discussions, the impugned award is modified, as indicated hereinabove, and the appeals are allowed.

39. Send down the record after placing copy of the judgment on each of the Tribunal's files.