
(2015) 12 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : FAO No. 95 of 2009

United India Insurance Company Ltd.	APPELLANT
Vs	
Naveen Gupta and Others	RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Constitution of India, 1950 — Article 41
Evidence Act, 1872 — Section 106
Motor Vehicles Act, 1988 — Section 166, 96

Citation : (2015) 12 SHI CK 0033

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

Bench : Single Bench

Advocate : Lalit K. Sharma, Advocate, for the Appellant; Rakesh Thakur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. This appeal is directed against the award dated 29th November, 2008, made by the Motor Accident Claims Tribunal-II, Kangra at Dharamshala, H.P. (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 29-K/2005 titled Naveen Gupta versus Shri Sikander Singh & others, whereby compensation to the tune of Rs. 2,60,789/- with interest @ 7 1/2% per annum and cost quantified at Rs. 7,000/- was awarded in favour of the claimant-respondent No. 1 herein and the insurer-appellant herein came to be saddled with liability (for short, "the impugned award").
2. The claimant, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.
3. The insurer has questioned the impugned award, on the grounds taken in the memo of appeal.
4. Learned Counsel for the appellant-insurer argued that the accident was not

the outcome of the rash and negligent driving of driver, namely, Sikander Singh, but the same was caused by the claimant himself, while driving his motor cycle and prayed that the appellant be exonerated from liability. The argument is misconceived for the following reasons.

5. The claimant, being victim of the motor vehicular accident, had filed the claim petition under Section 166 of the Motor Vehicles Act, for short "the Act", before the Tribunal, for grant of compensation to the tune of Rs. 2,00,000/- as per the break-ups given in the same.

6. In the claim petition, the claimant has specifically averred that the accident was outcome of rash and negligent driving of driver, namely, Sikander Singh.

7. The respondents contested the claim petition on the grounds taken in their memo of objections.

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

"1. Whether the respondent No. 1 was driving vehicle PB-46A-9433 owned by respondent No. 2 in a rash and negligent manner and had struck it against the motor cycle of the petitioner causing grievous injury to him?

...OPP

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

...OPP

3. Whether the respondent No. 1 was not holding valid and effective driving licence at the time of accident, if so its effect?

....OPR-3

4. Whether the vehicle was being driven by the respondent No. 1 in violation of documents and rule, If so, its effect?

...OPR-3.

5. Whether the petition is not maintainable against the respondent No. 3 as alleged?

....OPR

6. Relief."

9. The parties have led evidence. The Tribunal after scanning the evidence, oral as well as documentary, held that driver, namely, Sikander Singh, has driven the offending vehicle, i.e. Tata Indica bearing registration No. PB-46A-9433, rashly and negligently, on 03.12.2004, at about 9.00-9.05 a.m, at Dharamshala Road, Birta, District Kangra and caused the accident, in which claimant sustained injuries.

10. I have gone through the impugned award. The Tribunal has made discussion in paras 8 to 13 relating to rash and negligent driving, scanned the evidence and rightly came to the conclusion that the accident was outcome of the rash and negligent driving of driver, namely, Sikander Singh. There is nothing on the file, on the basis of which, it can be held that the accident was outcome of the rash and negligent driving of the claimant himself or the outcome of contributory negligence.

11. It is apt to record herein that Shri Ashneel Singh Gill, who was Pillion Rider on the motor cycle, appeared in the witness box as PW-4 on behalf of the claimant. He has given details how the accident has taken place, which is recorded in para-13 of the impugned award.

12. It is a beaten law of the land that strict proof is not required, but the claimant has prima-facie to prove, that the accident is outcome of rash and negligent driving of the driver.

13. My this view is fortified by the judgment of the Apex Court in the case titled as N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, . It is apt to reproduce relevant portion of para 3 of the judgment herein:

"3. Road accidents are one of the top killers in our country, specifically when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of

delayed justice. Many States are unjustly indifferent in this regard."

(Emphasis Added)

14. The Jammu and Kashmir High Court in the case titled as Oriental Insurance Co. Vs. Mst. Zarifa and Others, , held that the MV Act is Social Welfare Legislation and the procedural technicalities cannot be allowed to defeat the purpose of the Act. It is profitable to reproduce para 20 of the judgment herein:

"20. Before concluding, it is also observed that it is a social welfare legislation under which the compensation is provided by way of Award to the people who sustain bodily injuries or get killed in the vehicular accident. These people who sustain injuries or whose kith and kins are killed, are necessarily to be provided such relief in a short span of time and the procedural technicalities cannot be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants."

15. It would also be profitable to reproduce relevant portion of para 12 of the judgment of the Apex Court in the case titled as Sohan Lal Passi Vs. P. Sesh Reddy and others, , herein:

"12..... While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."

16. The Apex Court in a case titled Dulcina Fernandes and Others Vs. Joaquim Xavier Cruz and Another, has laid down the same principle and held that strict proof and strict links are not required.

17. The same principle has been laid down by this Court in a series of cases.

18. A Single Judge of this Court in FAO No. 127 of 1999, titled as Bimla Devi and others versus Himachal Road Transport Corporation and others, decided on 22.08.2005, held that the claimants have to prove the case by leading cogent evidence and applied the mandate of CPC read with the Evidence Act, was questioned before the Apex Court by the medium of Civil Appeal No. 2538 of 2009, titled as Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others, , and the Apex Court set aside the said judgment and held that

strict proof is not required. It is apt to reproduce paras 2 and 12 to 15 of the judgment herein:

"2. This appeal is directed against a judgment and order dated 22.8.2005 passed by the High Court of Himachal Pradesh, Shimla in FAO No. 127 of 1999 whereby and whereunder an appeal preferred against a judgment and award dated 28.10.1998 passed by the Motor Accident Claims Tribunal-II [MACT (I), Nahan] in MAC Petition No. 21-NL/2 of 1997, was set aside.

xxx xxx xxx

12. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal *stricto sensu* is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a *sine qua non* for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimants predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report vis-?-vis the averments made in a claim petition.

13. The deceased was a Constable. Death took place near a police station. The post mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of a constable has taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a bus stand and near a police station. In such an event, the court can presume that the police officers themselves should have taken possession of the dead body.

14. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos. 2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos. 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of

the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

19. The claimant has prima facie proved that the driver of the offending vehicle had driven the same, rashly and negligently, at the relevant point of time and had caused the accident, in which the claimant sustained injuries. Accordingly, the findings returned by the Tribunal on Issue No. 1 are upheld.

Issues No. 3 to 5.

20. It was for the respondents to prove issues No. 3 to 4, have not led any evidence, thus have failed to discharge the onus. Accordingly, the findings returned by the Tribunal on Issues No. 3 to 5 are upheld.

Issue No. 2

21. The Tribunal has made assessment, the details of which are given in paras-14 to 16 of the impugned award. The assessment made by the Tribunal is reasonable. The award amount is just and appropriate, cannot be said to be excessive, in any way.

22. Having said so, it is held that there is no merit in the appeal. Accordingly, the impugned award is upheld and the appeal is dismissed.

23. The Registry is directed to release the awarded amount in favour of the claimant, strictly in terms of the conditions contained in the impugned award, through payees' account cheque.

24. Send down the records after placing a copy of the judgment on the file of the claim petition.