

(2015) 11 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : FAOs Nos. 249 and 504 of 2009

United India Insurance Company Ltd.

APPELLANT

Vs

Sanyogita Devi and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Citation : (2015) 11 SHI CK 0008

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

Bench : Single Bench

Advocate : Ashwani K. Sharma, Senior Advocate and Monika Shukla, Advocate, for the Appellant; Ajay Sharma, Advocate, for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.

1. Both these appeals are outcome of a motor vehicular accident, which was allegedly caused by driver, namely, Raj Kumar, while driving vehicle i.e. bus bearing registration No. HP-67-7570, rashly and negligently, on 16.02.2006, at about 8.36 a.m., at Aghaj, Tehsil and District Hamirpur. Thus, I deem it proper to determine both these appeals by this common judgment.

2. FAO No. 249 of 2009 is directed against the award dated 26th March, 2009, passed by the Motor Accident Claims Tribunal, Hamirpur, H.P. (hereinafter referred to as "the Tribunal") in MAC Petition No. 32 of 2006, whereby compensation to the tune of Rs. 5,50,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants and the insurer was saddled with liability (for short, "the impugned award-I").

3. Subject matter of FAO No. 504 of 2009 is the award dated 15th November, 2009, passed by the Tribunal, in MAC Petition No. 44 of 2007, whereby compensation to the tune of Rs. 6,44,697/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimant and the insurer was saddled with liability (for short, "the

impugned award-II").

4. By the medium of these appeals, the insurer has questioned both the impugned awards, on the grounds taken in the memo of appeals.

5. The owner-insured, driver and claimants have not questioned the impugned awards, on any count. Thus, have attained finality, so far as those relate to them.

6. Learned Counsel for the appellant-insurer argued that the insurer has questioned the impugned awards on three grounds; (i) driver Raj Kumar was not having a valid and effective driving licence; (ii) the owner has committed willful breach and (iii) the amount awarded in both the claim petitions is excessive.

7. Learned Counsel for the insured argued that the driver was having a valid and effective driving licence at the time of accident and the owner has not committed any breach.

8. There is no dispute on the other issues.

9. Claimants being victims of the motor vehicular accident filed two claim petitions, i.e. MAC Petition No. 32 of 2006 & MAC Petition No. 44 of 2007, separately, before the Tribunal, for grant of compensation to the tune of Rs. 10,00,000/- each, as per the break-ups given in the claim petitions.

10. The respondents resisted the claim petitions on the grounds taken in their respective memo of objections.

11. The Tribunal, on the pleadings of the parties, framed similar set of issues. It is apt to reproduce the issues framed in one of the claim petitions herein.

"1. Whether the petitioner has suffered injuries due to rash and negligent driving of Bus No. HP-67-7570 by Raj Kumar, respondent No. 1, as alleged?

...OPP

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

....OPP

3. Whether the Bus in question was being plied in violation of the terms and conditions of the insurance policy and provisions of Motor Vehicles Act, 1988, as alleged?

...OPR-3 (in claim petition No. 44 of 2007)

4. Whether the respondent No. 1 was not holding a valid and effective driving licence to drive the vehicle in question at the time of accident?

....OPR-3

5. Relief."

12. The parties have led evidence. The Tribunal after scanning the evidence, oral as well as documentary, held that driver Raj Kumar, has driven the offending vehicle, rashly and negligently, on 16.02.2006, at about 8.36 a.m., at Aghaj, Tehsil and District Hamirpur, caused the accident, as a result of which, deceased Pankaj Thakur, sustained injuries and succumbed to the same and claimant Rajesh Kumar suffered grievous injuries.

Issue No. 1.

13. The findings returned by the Tribunal on this issue are not in dispute. Accordingly, the same are upheld.

Issues No. 3 & 4.

14. The Tribunal has rightly discussed and held that driver was competent to drive the offending vehicle, for the reason that he was having valid and effective driving licence (Mark-A, on the file of Claim Petition No. 32 of 2006), which does disclose that driver Raj Kumar was competent to drive the bus-offending vehicle.

15. The insurer has not led any evidence to prove that the driver was not having a valid and effective driving licence at the relevant time and the owner has committed any willful breach. Accordingly, the findings returned by the Tribunal on issues No. 3 & 4 are upheld.

Issue No. 2.

16. It appears that the Tribunal has fallen in an error in awarding compensation in Claim Petition No. 32 of 2006, which is subject matter of FAO No. 249 of 2009.

17. Admittedly, the deceased was a bachelor boy of 18 years. Thus, it can be safely held, by exercising guess work, that his monthly income was not less than Rs. 4,000/-. In view of the ratio laid down by the apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, read with Reshma Kumari and Others Vs. Madan Mohan and Another, , 50% of the monthly income was to be deducted towards his personal expenses and the claimants were to be held entitled to rest 50%. Thus, the claimants have lost source of dependency to the tune of Rs. 2,000/- per month.

18. The multiplier of "16" is applicable in this case, in view of the 2nd Schedule appended to the Motor Vehicles Act, 1988 read with the ratio laid down by the Apex Court in Sarla Verma's case, supra.

19. Accordingly, it is held that the claimants are entitled to Rs. 2,000/- x 12 = Rs. 24,000 x 16 = 3,84,000/-, under the head "loss of dependency", Rs. 10,000/- under the head "loss of consortium", Rs. 10,000/- under the head "loss of estate", Rs. 10,000/- under the head "loss of love and affection" and Rs. 10,000/- under the head "funeral expenses".

20. Having said so, it is held that, the claimants are entitled to compensation to the tune of Rs. 3,84,000/- + 10,000/- + 10,000/- + 10,000/- + 10,000/-, total

amounting to Rs. 4,24,000/- with 7.5% interest per annum from the date of filing of the claim petition.

21. In FAO No. 249 of 2009, the amount of compensation is reduced, as indicated above.

22. In FAO No. 504 of 2009, the claimant-injured was 23 years of age at the time of accident. He suffered 70% disability, which has shattered his physical frame and has rendered his life miserable. He is deprived of all charms of his life.

23. The Tribunal has discussed this issue from paras 29 to 38 of impugned award-II. I am of the considered view that the Tribunal has rightly returned the findings on the said issue and awarded the compensation, which is reasonable. Hence, no interference is required.

24. Having said, impugned award-I is modified, as indicated above and impugned award-II is upheld.

25. The Registry is directed to release the amount to the claimants and the balance amount, if any, in FAO No. 249 of 2009, be released in favour of the appellant through payees' account cheque.

26. Send down the records after placing a copy of the judgment on each file of the claim petitions.