

(2016) 08 SHI CK 0078

In the High Court Of Himachal Pradesh

Case No : FAO No. 343 of 2011 FAO No. 343 of 2011.

United India Insurance Company Ltd. - Appellant @HASH Sh. Suresh Kumar and Others

Date of Decision : 26-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, Section 166

Citation : (2016) AAC 2307

Hon'ble Judges : Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Sh. Ashwani Sharma, Senior Advocate, with Mr. Nishant Kumar, Advocate, for the Appellant; Mr. Dheeraj Kumar Verma, Advocate, for the Respondent No. 1; Mr. Bimal Gupta, Senior Advocate with Mr. Vineet Vashisht, Advocate, for the Respondent No. 2; Nemo, for

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, CJ.(Oral) - Despite service, there is no representation on behalf of respondents No. 3 & 4 in FAO No. 343 of 2011, respondents No. 9 & 10 in FAO No. 344 of 2011, respondents No. 2 & 4 in FAO No. 425 of 2011 and respondents No. 3 & 5 in FAO No. 7 of 2012. Hence, they are set ex-parte.

FAO No.343 and 344 of 2011.

2. These appeals have been filed by the insurer against the awards, dated 31st March, 2011, passed by the Motor Accident Claims Tribunal, Fast Track Court, Solan, (for short, the Tribunal at Solan), in two claim petitions bearing No. 32TC/2 of 2007, titled Suresh Kumar v. Shiv Kumari and others, and 33FTC/2 of 2007, titled Smt.Rama Sharma and others v. Shiv Kumari and others, whereby the claim petitions were allowed and compensation to the tune of Rs. 11,50,000/- and Rs. 14,60,000/-, with interest at the rate of 7.5% per annum, was granted in favour of the claimants in respective claim petitions, and the insurer was saddled with the liability.

FAO Nos. 425 of 2011 and 7 of 2012.

3. Both these appeals are outcome of a common award, dated 30th August, 2011, passed by the Motor Accident Claims Tribunal, Shimla, (for short, the Tribunal at Shimla) in Claim Petition No.60-S/2 of 2007, titled Tanuja and another v. Shiv Kumari and others, whereby the claim petition was allowed and compensation for Rs. 6,72,000/-, with interest at the rate of 9% per annum, was granted in favour of the claimants and the owner and the driver were saddled with the liability. Feeling aggrieved, the owner has filed FAO No.7 of 2012 and the claimants challenged the impugned award by way of FAO No.425 of 2011 on the ground of adequacy of compensation.

4. All the appeals are outcome of one vehicular accident, therefore, the same are taken up together for final disposal.

5. Facts of the case, in brief, are that on 26.11.2006, Suresh Kumar, Rama Nand and Narender, were traveling in Maruti Car bearing registration No.HP-18-A-0123, which was being driven rashly and negligently by its driver, and at about 10.30 a.m. when the said car reached at village Khagna (Sajnada), Nerva Chopal, it met with an accident, in which Suresh Kumar sustained injuries and other two persons, namely, Rama Nand and Narender sustained injuries and succumbed to the same.

6. Suresh Kumar injured filed Claim Petition No.32TC/2 of 2007 before the Tribunal at Solan for grant of compensation to the tune of Rs. 25,00,000/-, (subject matter of FAO No.343 of 2011) and the dependants of deceased Rama Nand also invoked the jurisdiction of the Tribunal at Solan by the medium of Claim Petition No.33FTC/2 of 2007 (subject matter of FAO No.344 of 2011), for grant of compensation to the tune of Rs. 25,00,000/-

7. The dependants of deceased Narender filed Claim Petition No.60-S/2 of 2007 before the Tribunal at Shimla and claimed compensation to the tune of Rs. 20,00,000/-, (subject matter of FAO Nos. 425 of 2011 and 7 of 2012).

8. The respondents resisted the claim petitions by filing replies. Issues came to be framed and the parties led their evidence.

9. The Tribunal at Solan, after scanning the pleadings and the evidence, came to the conclusion that Sandeep Kumar was driving the offending vehicle, rashly and negligently, and had caused the accident. It was also held that said Sandeep Kumar was having a valid and effective driving licence at the relevant point of time, the factum of insurance was admitted and accordingly, saddled the insurer with the liability.

10. Whereas, the Tribunal at Shimla, after scanning the pleadings and the evidence, has held that at the time of accident, the offending vehicle was not being driven by Sandeep Kumar, was being driven by Suresh Kumar. It was also held that said Suresh Kumar was not having a valid and effective driving licence at the time of accident, the owner has committed the wilful breach and directed the original respondents No. 1, 2, & 4, i.e. Shiv Kumari, Sandeep Kumar and

Dharmender Sharma to satisfy the award and the insurer was discharged from its liability.

11. It is apt to record herein that Suresh Kumar has also filed Claim Petition No.32TC/2 of 2007 before the Tribunal at Solan, as discussed herein above.

12. The claimants, owner-insured, driver and respondent No. 4, in the claim petitions filed before the Tribunal at Solan, have not questioned the impugned awards on any ground, thus, the same have attained finality so far as the impugned awards relate to them.

13. In the given facts and circumstances, the following questions arise for determination in the instant appeals:

(i) Whether the offending vehicle, at the time of accident, was being driven by Sandeep Kumar or by Suresh Kumar?

(ii) Who is to be saddled with the liability?

14. As has been discussed herein above, both the Tribunals have passed contradictory awards. The Tribunal at Solan has directed the insurer to satisfy the impugned awards, while the Tribunal at Shimla exonerated the insurer and held that the owner and the driver have to satisfy the impugned award.

15. It is worthwhile to mention here that copy of the FIR is on the record and was proved. However, insurer led evidence before the Tribunal at Shimla, which was foundation of the impugned award made by the Tribunal at Shimla. But, the insurer has not led the same evidence before the Tribunal at Solan, which resulted in passing of two contradictory awards.

16. In the given circumstances, with the consent of the parties, it is proper to remand the claim petitions to the Tribunal at Shimla for determining the issues framed in para-13, supra.

17. Learned Counsel for the parties stated at the Bar that they have no objections to the said proposition. Their statements are taken on record.

18. Accordingly, the impugned awards merit to be set aside and the claim petitions are to be remanded to the Tribunal at Shimla for determining the said issues, as indicated above.

19. The quantum of compensation awarded by the Tribunal at Solan in Claim Petitions No.32TC/2 of 2007, titled Suresh Kumar v. Shiv Kumari and others, and 33FTC/2 of 2007, titled Rama Sharma and others v. Shiv Kumari and others, is not in dispute and is accordingly upheld.

20. At this stage, Mr. Ashwani Kumar Sharma, learned Senior Advocate, appearing for the insurer, argued that the Claim Petition filed by Suresh Kumar has been remanded to the Tribunal at Shimla and in case the said Tribunal comes to the conclusion that Suresh Kumar himself was driving the offending vehicle, in that eventuality, the claim petition filed by him, bearing No.32TC/2 of 2007,

would not be maintainable and he would not be entitled to compensation. He further submitted that the amount deposited by the insurer, in the claim petition of Suresh Kumar, in the Registry of this Court be ordered to be kept in fixed deposit till the decision of the Tribunal at Shimla.

21. In the facts of the case, the prayer of the learned Senior Advocate for the insurer is allowed and the Registry is directed to keep the amount, deposited by the insurer in FAO No.343 of 2011, titled United India Insurance Co. Ltd. v. Suresh Kumar and others, in fixed deposit, subject to the decision to be made by the Tribunal at Shimla.

22. FAO No.425 of 2011 has been filed by the claimants against the award passed by the Tribunal at Shimla on the ground that the amount awarded by the Tribunal at Shimla is inadequate. Learned counsel for the appellants-claimants that the amount awarded by the Tribunal is on the lower side and deserves to be enhanced accordingly.

23. The question is - whether the amount awarded by the Tribunal is inadequate? The answer is in the affirmative for the following reasons.

24. Admittedly, the deceased was a mason by profession. The Tribunal has assessed the monthly income of the deceased at Rs. 5,000/-. The claimants have pleaded in the claim petition that the monthly income of the deceased was Rs. 15,000/-, which appears to be excessive. Since the deceased was mason, therefore, by exercising guess work, it can safely be held that he would not have been earning less than Rs. 200/- per day, or Rs. 6,000/- per month.

25. The claimants are two in number. The Tribunal has fallen into an error in deducting 7th towards the personal expenses of the deceased, rather 7rd amount was to be deducted while keeping in view the ratio laid down by the Apex Court in Sarla Verma (Smt.) and others v. Delhi Transport Corporation and others Delhi Transport Corporation and another, reported in AIR 2009 SC 3104, upheld by a larger Bench of the Apex Court in a case titled as Reshma Kumari & others v. Madan Mohan and another, reported in 2013 AIR (SCW) 3120. Accordingly, after deducting 7rd amount, it is held that the claimants lost source of dependency to the tune of Rs. 4,000/- per month.

26. Admittedly, the age of the deceased was 30 years at the time of accident. The Tribunal has wrongly applied the multiplier of "14". In view of the 2nd Schedule appended to the Motor Vehicles Act read with the ratio laid down by the Apex Court in Sarla Verma's case (supra), case (supra), read with the judgment rendered by the Apex Court in case titled as Munna Lal Jain & another v. Vipin Kumar Sharma & others, reported in 2015 AIR SCW 3105, multiplier of "15" is just and appropriate and is applied in the present case.

27. Accordingly, the claimants are held entitled to Rs. 4,000/- x 12 x 15= Rs. 7,20,000/- under the head "loss of dependency".

28. The claimants are also held entitled to a sum of Rs. 10,000/- each, i.e. Rs.

40,000/-, under the heads "loss of love and affection", "loss of consortium", "loss of estate" and "funeral expenses".

29. Accordingly, the claimants in Claim Petition No.60-S/2 of 2007, are held entitled to the total compensation to the tune of Rs. 7,20,000/- + Rs.40,000/- = Rs. 7,60,000/-.

30. Tribunal at Shimla has awarded interest at the rate of 9% per annum, which is on the higher side and is not in accordance with the prevailing rates. It is beaten law of the land that the rate of interest it to be awarded as per the prevailing rates, in view of the judgments rendered by the Apex Court in cases titled as United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others, reported in (2002) 6 SCC 281; Santosh Devi v. National Insurance Company Ltd. and others, reported in 2012 AIR SCW 2892; Amrit Bhanu Shali and others v. Nation Amrit Bhanu Shali and others, reported in (2012) 11 SCC 738; Smt. Savita v. Binder Singh & others, reported in 2014 AIR SCW 2053; Kalpanaraj & others v. Tamil Nadu State Transport Corpn., reported in 2014 AIR SCW 2982; Amresh Kumari v. Niranjan Lal Jagdish Pd. Jain and others, reported in (2015) 4 SCC 433; and Mohinder Kaur and others v. Hira Nand Sindhi (Ghoriwala) and another, reported in (2015) 4 SCC 434, and discussed by this Court in a batch of FAOs, FAO No. 256 of 2010, titled as Oriental Insurance Company v. Smt. Indiro and others, being the lead case, decided on 19.06.2015.

31. Having said so, I deem it proper to reduce the rate of interest from 9% per annum to 7.5% per annum. The compensation amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till its realization.

32. The compensation amount passed in Claim Petition No.60-S/2 of 2007 is enhanced and the impugned award is modified, as indicated above.

33. The insurer is directed to deposit the enhanced amount in FAO No. 425 of 2011. The Registry is directed to release the entire amount deposited in FAOs No. 425 and 344 of 2011 to the claimants as per the terms and conditions contained in the impugned awards.

34. The amount deposited in FAO No.343 of 2011 arising out of Claim Petition No.32TC/2 be deposited in the fixed deposit subject to the decision to be made by the Tribunal at Shimla.

35. With the consent of the learned Counsel for the parties, the impugned awards so far relate to issues framed herein above in para-13 are set aside and all the three claim petitions are remanded to Tribunal at Shimla.

36. Parties, through their counsel, are directed to cause appearance before the Tribunal at Shimla on 05.09.2016. 05.09.2016. 09.2016.

37. The Tribunal at Shimla is directed to provide four opportunities to the owner-insured within four weeks w.e.f 5th September, 2016 and thereafter to provide

four opportunities to the insurer to lead evidence, if any, in rebuttal, four three weeks. Thereafter, the Tribunal is directed to decide the claim petitions within two weeks.

38. It is made clear that in case the Tribunal at Shimla comes to the conclusion that insured-owner has committed wilful breach, the insurer is to be granted right of recovery.

39. The impugned awards are modified and all the appeals are disposed of, as indicated above.

40. Registry to send the records along with a copy of this judgment to the Tribunal at Shimla forthwith so that the record reaches the Tribunal below well before the date fixed, i.e. 05.09.2016.