
National Insurance Company Ltd. Vs Ram Kali and Others

FAO No. 416 of 2008

Court: High Court of Himachal Pradesh

Date of Decision: July 3, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 8 Rule 3#Motor Vehicles Act, 1988 - Section 166, 173

Citation: (2015) 2 ShimLC 945

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

Bench: Single Bench

Advocate: Ashwani K. Sharma, for the Appellant; Dinesh Bhanot, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Mansoor Ahmad Mir, C.J

Appellant-insurer has invoked the jurisdiction of this Court in terms of Section 173 of the Motor Vehicles Act,

1988, (for short, the Act), by the medium of the present appeal, and has questioned the award, dated 15th March, 2008, passed by the Motor

Accident Claims Tribunal, Solan camp at Nalagarh, (for short, the Tribunal), in Claim Petition No. 8-NL/2 of 2005/04, titled Ram Kali and others

vs. Pritpal Singh and others, whereby compensation to the tune of Rs. 5,60,000/-, with interest at the rate of 9% and the costs quantified at Rs.

1,000/-, was awarded in favour of the claimants, and the insurer-appellant was saddled with the liability, (for short, the impugned award).

2. The claimants, the owner and the driver have not questioned the impugned award, thus, the same has attained finality so far as it relates to them.

3. Feeling aggrieved, the insurer has challenged the impugned award on two grounds, firstly on the ground that the amount of compensation

awarded by the Tribunal is excessive; and secondly that the insurer is not liable to pay compensation since the claimants have failed to prove that

the driver, namely, Pritpal Singh, original respondent No. 1 (respondent No. 7 herein), had driven the offending vehicle rashly and negligently.

4. In order to determine both these issues, it is necessary to give a flash back of the facts of the case, the womb of which gave birth to the instant

appeal.

5. The claimants invoked the jurisdiction of the Tribunal under Section 166 of the Act for grant of compensation to the tune of Rs. 10.00 lacs, as

per the break-ups given in the claim petition, on the ground that on 17.6.2004, at about 11.00 A.M., near Chungi Post, GT Road, Ludhiana, the

driver of the offending vehicle, namely, Pritpal Singh, had driven the offending vehicle i.e. Car bearing registration No. PB-10AU-7572, rashly and

negligently and caused the accident, as a result of which the deceased sustained multiple injuries and succumbed to the same. Qua the accident, an

FIR bearing No. 74/04, under Sections 279, 337 and 304-A, was also registered at Police Station, Salem Tawri, Ludhiana.

6. The driver and the owner of the offending Car opted not to contest the Claim Petition before the Tribunal and, therefore, they were proceeded

against ex parte. Thus, the averments contained in the Claim Petition, so far as they relate to the driver and the owner, have gone un-rebutted.

7. The insurer resisted the Claim Petition by filing reply. In its reply to paragraph 24 of the Claim Petition, the insurer has taken evasive stand that

no accident had taken place and that the accident in question had not occurred due to sole rash and negligent driving of the driver of the offending

vehicle, which is no denial in terms of the mandate of Order VIII Rule 3 of the Code of Civil Procedure, (for short, the CPC).

8. On the pleadings of the parties, the Tribunal settled the following issues:

1. Whether the deceased Roop Lal had suffered injuries on account of rash/negligent driving of car by respondent No. 1 and had died as such?

OPP

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

OPP

3. Whether the respondent No. 1 did not possess a valid and effective driving licence and documents?

OPR3

4. Relief.

9. In order to prove the case set out in the Claim Petition, the claimant Ram Kali (widow of deceased Roop Lal) appeared in the witness box as

PW-1. The insurer (original respondent No. 3) has opted not to lead any evidence.

10. I have examined the statement of Ram Kali PW-1 and the contents of the FIR Ext. PA, which do disclose prima facie that the driver of the

offending vehicle had driven the offending vehicle rashly and negligently on the fateful day and had caused the accident. The said statement of the

claimant Ram Kali, in the absence of any evidence to the contrary led by the insurer, has remained un-rebutted.

11. Sine qua non for granting compensation in a claim petition under Section 166 of the Act is that the claimants have to plead and prima facie

prove that the accident was the outcome of rash and negligent driving on the part of the driver driving the offending vehicle at the relevant point of

time. In the instant case, the claimants have specifically averred that the accident had occurred due to the rash and negligent driving of the driver

Pritpal Singh. It was for the driver of the offending vehicle to deny the said averment and prove otherwise, if it was so. However, the driver of the

offending vehicle did not appear before the Tribunal and file any reply to the claim petition.

12. During the course of hearing, the learned counsel appearing for the driver of the offending vehicle (respondent No. 7 herein) has placed on

record a copy of the judgment passed by the Judicial Magistrate Ist Class, Ludhiana, in Criminal Case No. 327 of 17-9-2004, emanating out of

FIR No. 74, dated 18.6.2004, Police Station, Salem Tabri, Ludhiana, whereby the driver of the offending vehicle faced trial for the accident in

question and was acquitted.

13. The learned counsel for respondent No. 7 (driver of the offending vehicle) has not denied the rash and negligence on the part of the driver of

the offending vehicle only for the purpose of grant of compensation in the instant lis.

14. Having said so, the Tribunal has rightly decided issue No. 1 in favour of the claimants and against the owner, the driver and the insurer.

Accordingly, the findings returned on this issue by the Tribunal are upheld.

15. Coming to the second ground of attack qua adequacy of compensation, the Tribunal, after relying upon the certificate Ext. PW-1/B, has held

that the age of the deceased, at the time of accident, was 33 years and applied the multiplier of 15, which is just and proper while keeping in view

the mandate of the Apex Court in 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, which decision was also upheld by the larger Bench of the Apex Court in 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 .

16. The Tribunal, after making detailed discussion in paragraph 12 of the impugned award, has assessed the monthly income of the deceased at

Rs. 4,500/-, which, by no stretch of imagination, can be said to be on the higher side. After deducting 1/3rd amount, the Tribunal held that the

claimants lost source of dependency to the tune of Rs. 3,000/- per month. While deducting 1/3rd amount towards the personal expenses of the

deceased, the Tribunal has lost sight of the fact that the claimants, in the instant case, are six in number and, therefore, only 1/5th amount ought to

have been deducted towards the personal expenses of the deceased. However, the claimants have not challenged the impugned award, therefore,

the same is reluctantly upheld.

17. Having glance of the above discussion, there is no merit in the appeal filed by the insurer and the same is dismissed. The Registry is directed to

release the amount in favour of the claimants strictly in terms of the impugned award.