

Champa Sharma and anr. Vs. H.P. State Electricity Board and ors.

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Court : Himachal Pradesh

Decided On : Apr-30-1998

Reported in : 1999ACJ883

Judge : P.K. Palli and; R.L. Khurana, JJ.

Appeal No. : F.A.O. (MVA) No. 90 of 1994 with Cross-objection No. 269 of 1994

Appellant : Champa Sharma and anr.

Respondent : H.P. State Electricity Board and ors.

Advocate for Def. : R.S. Jamalata and; D.V. Sharma, Advs.

Advocate for Pet/Ap. : A. Burathoki, Adv.

Disposition : Appeal allowed

Judgement :

R.L. Khurana, J.

1. In a motor vehicle accident which took place on 18.1.1990 at Dubbling Bridge, on Kalpa-Kaja road in District Kinnaur, one Kishore Kumar Sharma, a draftsman in the H.P. State Electricity Board, had died. The deceased at the relevant time was travelling in the official jeep of the State Electricity Board bearing No. HPS 6876. The said jeep at the relevant time was being driven by Sohan Lal driver. It is

alleged that the accident occurred due to the rash and negligent driving on the part of the said driver, who while so driving lost control over the vehicle as a result of which it went off the road and fell down about 500 feet below in the khud. In such accident all the five occupants including the driver had died.

2. The widow and minor daughter of the deceased had approached the learned Motor Accidents Claims Tribunal (I), Shimla seeking compensation to the tune of Rs. 5,00,000 on account of the death of the deceased Kishore Kumar Sharma. During the pendency of such petition before the learned Tribunal, the parents of the deceased also came to be impleaded as parties. The widow, minor daughter and parents of the deceased are hereinafter referred to as the claimants.

3. The petition was resisted by the State Electricity Board. The accident and the death of the deceased Kishore Kumar Sharma therein were not denied. The rash and negligent driving on the part of its driver was, however, denied. While denying the rash and negligent driving on the part of the driver, the State Electricity Board has not offered any explanation as to the cause of accident.

4. The learned Tribunal vide its impugned award dated 11.1.1994 dismissed the claim petition insofar as the widow and parents of the deceased are concerned by holding that the petition filed by them was barred by time and there existed no reasonable grounds to condone the delay. Insofar as the claim on behalf of the minor daughter of the deceased is concerned, the same was allowed and compensation to the tune of Rs. 1,68,000 was granted in her favour.

5. The claimants, namely, the widow and the minor daughter of the deceased, feeling aggrieved by the award of the learned Tribunal have come up before this Court by way of an appeal being F.A.O. No. 90 of 1994. The other two claimants, namely, the parents of the deceased have come up before this Court by way of cross-objections being Cross-objection No. 269 of 1994.

6. By virtue of the present judgment, we propose to dispose of the above said appeal and cross-objections together by this single judgment since common questions are involved therein.

7. The accident in the present case, as stated above, took place on 18.1.1990. The claim petition was preferred on 17.1.1991. Sub-section (3) of Section 166, Motor Vehicles Act, 1988 as was in force as on the date of the filing of the petition by the claimants provided for a period of limitation of six months from the date of the accident. It was further provided that the Tribunal may entertain a petition filed beyond a period of six months but within one year of the accident on sufficient cause being shown for the delay. This Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 was deleted from the statute book by virtue of the Amendment Act No. 54 of 1994. Consequent upon the deletion of Sub-section from the statute book, now there is no period of limitation prescribed for a petition under Section 166 of the Motor Vehicles Act for compensation in respect of the death or injuries arising out of the use of a motor vehicle.

8. The Hon'ble Apex Court in *Dhanna-lal v. D.P. Vijayvargiya*, 1996 ACJ 1013 (SC), had the occasion of examining the effect of the deletion of Sub-section (3) of Section 166 of the Motor Vehicles Act, 1988 by the Amending Act No. 54 of 1994. It was held that though it does not appear that the provisions of Sub-section (3) of Section 166 have been deleted retrospectively, there is nothing in the Amending Act to show that the benefit of the deletion of Sub-section (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. It was further held that when Sub-section (3) of Section 166 has been omitted then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place and the claim petition cannot be thrown out on the ground that the same was barred by time when Sub-section (3) of Section 166 was in force.

9. In view of the ratio laid down by the Hon'ble Apex Court with regard to scope and effect of the deletion of Sub-section (3) of Section 166, Motor Vehicles Act, 1988 vide the Amending Act No. 54 of 1994 the findings of the learned Tribunal that the claim petition qua the widow and parents of the deceased was barred by time, are, on the face of it bad and liable to be set aside. Such claim petition in view of the deletion of Sub-section (3) of Section 166, Motor Vehicles Act would be deemed to be within time.

10. As stated above, the learned Tribunal has awarded compensation only in favour of claimant No. 2, Hemani Sharma, the minor daughter of the deceased.

11. Admittedly, the deceased was working as a draftsman with the H.P. State Electricity Board. Exh. RX is the salary certificate in respect of the deceased. A perusal of the same shows that the deceased was drawing a monthly salary of Rs. 3,278. The deceased at the relevant time was posted at Kalpa. The claimants who are the widow, minor daughter and parents of the deceased were residing in District Mandi and not with the deceased. Since the deceased was running a separate household establishment at Kalpa, it can be reasonably inferred that he must have been spending at least 1/3rd of his monthly salary and the remaining 2/3rd was being contributed by him for the maintenance of the claimants. Taking the monthly income of the deceased at Rs. 3,278 and deducting the portion which the deceased might have been spending on himself in running a separate household establishment at Kalpa, the dependency of the claimants is assessed at Rs. 2,000 per month or say Rs. 24,000 per annum.

12. The Hon'ble Supreme Court in U.P. State Road Trans. Corpn. v. Trilok Chandra, 1996 ACJ 831 (SC), has held that the Second Schedule attached to the Motor Vehicles Act, 1988 can be used by the court as a guide for determining the quantum of compensation payable to the

13. The deceased at the time of death was about 31 years of age. According to Second Schedule attached to the Motor Vehicles Act, 1988 in case of a deceased between the age of 30 years and 35 years a multiplier of 17 has to be applied. Applying the said multiplier, the total compensation payable to the claimants comes to Rs. 3,08,000 (sic. Rs. 4,08,000). The claimants are also entitled to general damages to the tune of Rs. 9,500 as under:

(a) funeral expenses...Rs. 2,000;

(b) loss of consortium to the widow of the deceased...Rs. 5,000; and

(c) loss to estate...Rs. 2,500.

14. A contention was raised on behalf of the respondent that the claimant No. 1, Champa Sharma, widow of the deceased is not entitled to any compensation inasmuch as she was not dependent on the deceased. According to the respondent Board, the said claimant is herself employed as a draftsman with the State Electricity Board and drawing a salary of more than Rs. 3,000 per month and as such she cannot be said to be dependent on the deceased.

15. Be it stated that even though the claimant Champa Sharma may not be financially dependent on the deceased in view of her independent source of income, she being the widow of the deceased is his natural legal heir and there has been a loss of estate to her consequent upon the death of her husband. Being a natural legal heir, she is entitled to claim compensation for the death of her husband.

16. It was further contended on behalf of the respondent Board that a sum of Rs. 15,000 was also paid to the claimant Champa Sharma as ex gratia grant and that such amount of Rs. 15,000 is liable to be deducted from the amount of compensation assessed to be payable to the claimants.

17. A Division Bench of this Court in Himachal Road Trans. Corpn. v. Arvind Singh Mann, 1991 ACJ 825 (HP), has held that the amount paid to the claimants as ex gratia grant is not to be deducted from the amount of compensation to be awarded in favour of the claimants under the provisions of Motor Vehicles Act.

18. Resultantly, the appeal as well as the cross-objections are allowed. The impugned award of the learned Tribunal dated 11.1.1994 is modified and all the four claimants are held entitled to the total compensation of Rs. 3,17,500 (sic. Rs. 4,17,500) as under:

Claimant No. 1 Champa Sharma (widow) = Rs. 83,125
Claimant No. 2 Himani Sharma, minor daughter of the deceased = Rs. 78,125
Claimant No. 3 Muni Lal, father of the deceased = Rs. 78,125
Claimant No. 4 Janki Devi, mother of the deceased = Rs. 78,125
Total = Rs. 3,17,500

19. The claimants shall further be entitled to interest at the rate of 12 per cent per annum on the above said amount from the date of the petition, that is, 17.1.1991 till the date of payment of the award amount.

No orders as to costs.

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