

Krishan Dutt Vs. Premi Devi and ors.

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Court : Himachal Pradesh

Decided On : Jul-24-1997

Reported in : 1998ACJ706

Judge : Lokeshwar Singh Panta and; Arun Kumar Goel, JJ.

Appeal No. : F.A.O. (MVA) Nos. 15 and 16 of 1990, 221 and 222 of 1989 with Cross-objections Nos. 55 and 60 of 199

Appellant : Krishan Dutt

Respondent : Premi Devi and ors.

Advocate for Def. : K.D. Sood,; Kuldeep Singh,; J.R. Thakur and;

Advocate for Pet/Ap. : Bhupender Gupta vice and; J.K. Verma, Advs.

Disposition : Appeal dismissed

Judgement :

Arun Kumar Goel, J.

1. We propose to take up all these four appeals along with cross objections filed by the claimants in F.A.O. (MVA) Nos. 221 and 222 of 1989 since they have arisen out of the same case as well as by the single award passed by the Motor Accidents Claims Tribunal, Solan.

2. Claim petition No. 87-S/2 of 1987 was filed by Hem Shankar (hereinafter referred to as 'the claimant') in respect of the injuries sustained by him against Krishan Dutt (hereinafter referred to as 'owner'), Raj Kumar (hereinafter referred to as 'the driver') and the Oriental Insurance Co. Ltd. (hereinafter referred to as 'the insurer'). Motor Accident Claim Petition No. 94-S/2 of 1987 came to be filed by Ajit Singh and Dheeraj Kumar (minors) through their mother and natural guardian, Premi Devi, who along with the mother of the deceased also claimed compensation.

3. Brief facts of this case are that claimant Hem Shankar who is a vegetable grower and late Joginder Singh were travelling in truck bearing registration No. HIA 637 being driven by the driver on the night intervening 2/3.9.1987 when, according to claimants in both the cases, on account of rash and negligent driving on the part of the driver, it met with an accident near Jabli on the Kalka-Shimla National Highway at around 12.30/1.00 a.m. At such point of time, Hem Shankar was travelling in the truck along with the goods, tomatoes and cucumber and he boarded the ill-fated truck from village Chabecha while it was on its way to Chandigarh.

4. In the case filed by claimant Ajit Singh and others, Joginder Singh who was working as a mechanic was also travelling along with boxes of tomatoes and cucumber.

5. Hem Shankar claimed compensation to the tune of Rs. 2,00,000/-, whereas Ajit Singh and others claimed Rs. 6,00,000/- as compensation. Age of Hem Shankar at the time of accident was 25 years, according to the claim petition.

6. Both the petitions were contested and resisted by the owner, driver as well as insurer. The owner and driver while admitting the factum of accident and Hem Shankar having sustained injuries as well as death of Joginder Singh as a result of the accident, denied that the accident was the result of rash and negligent driving as claimed by the claimants. On the other hand, their case was that the accident in question was the result of mechanical defect which developed due to sudden breakage of the front spring which further resulted in the steering wheel becoming free. As a consequence of this mechanical defect, the vehicle rolled down towards

its left side. The mechanical defect was latent in nature and was not traceable after due care and caution. Insurer while contesting the liability pleaded that the vehicle was being driven in breach of conditions specified in the insurance policy. Besides this, collusion between the claimants on one side as well as between owner and driver on the other was taken as defence. In the alternative, and without conceding its liability, it was pleaded that compensation claimed is excessive.

7. On the pleadings of the parties, the Motor Accidents Claims Tribunal framed the following issues in the claim petition titled Hem Shankar Sharma v. Krishan Dutt Sharma:

(1) Whether the petitioner has suffered injuries on account of rash and negligent driving of a truck by respondent No. 2?

... OPP

(2) Whether this Tribunal has no jurisdiction to try the petition?

... OPR-3

(3) Whether the petitioner was travelling as unauthorised person, if so, its effect?

... OPR-3

(4) Whether vehicle was being plied in breach of terms of the insurance policy?

... OPR-3

(5) Whether respondent No. 2 was not holding valid licence to drive the vehicle, if so, its effect?

... OPR-3

(6) Whether there is collusion between the petitioner and respondent Nos. 1 and 2? ... OPR-3

(7) To what amount the petitioner is entitled as compensation ?

... OPP

(8) Relief.

8. Following issues were framed in the claim petition titled Ajit Singh v. Krishan Dutt:

(1) Whether the deceased suffered fatal injuries due to the rash and negligent driving of motor vehicle by respondent No. 2?

...OPP

(2) Whether the insurer is not liable to indemnify the claim as alleged?

... OPR

(3) To what amount the claimants are entitled to get as compensation?

... OPP

(4) Relief.

9. After conclusion of the trial, the Tribunal below found that Hem Shankar, claimant is entitled to compensation in the sum of Rs. 93,600/- besides interest at the rate of 12 per cent per annum from the date of filing of the claim petition, i.e., 24.11.1987 till the date of payment or deposit of the amount within forty days failing which the liability to pay interest would be 20 per cent per annum from the said date.

10. In the claim petition filed by Ajit Singh, compensation of Rs. 1,59,000/- was allowed with 12 per cent per annum interest from the date of filing of the petition, i.e., 9.12.1987 till the date of payment or deposit of the amount within forty days failing which liability to pay interest at the rate of 14 per cent per annum was ordered.

11. A salient feature that needs to be noticed here is that in the case of Hem Shankar, there was medical evidence to show that he had suffered permanent disability to the extent of 15 per cent and when the certificate in that behalf Exh.

PF was issued by the Chief Medical Officer, Solan, Hem Shankar was having pain over his right hip region and inability to take the weight over right limb.

12. By means of F.A.O. No. 221 of 1989, insurer has questioned the award of the Tribunal passed in favour of Ajit Singh and other claimants, wherein Cross-objections No. 55 of 1990 have been filed by the claimants. By means of F.A.O. No. 15 of 1989, owner Krishan Dutt has questioned the award. Similarly, in F.A.O. No. 222 of 1989, insurer has contested the award passed in favour of Hem Shankar, claimant who has filed Cross-objections No. 60 of 1990 and F.A.O. No. 16 of 1990 has been filed by the owner questioning the award passed in favour of Ajit Singh and others.

13. The sole question urged by Mr. K.D. Sood in support of the two appeals filed by the insurer was that since Hem Shankar, injured and Joginder Singh, deceased were travelling in the vehicle which was a goods vehicle meant for carriage of goods and was adapted for the said purpose, as such for the owner of the goods, his client, is not liable for payment of compensation both under the law as well as in terms of insurance policy and he has thus prayed for allowing these two appeals and setting aside the impugned award against his client.

14. In the cross-objections filed by the claimants in both the appeals of the insurer, an attempt was made by the learned Counsel for the objectors to persuade this Court for enhancement of compensation, as according to him, in both the cases compensation awarded is neither reasonable nor just and the same is liable to be enhanced. In support of cross-objections, reference was made to evidence adduced during the course of trial.

15. So far as the matter relating to the liability of the insurance company for payment of compensation in respect of owner of goods travelling in a goods vehicle is concerned, it is no more *res Integra* and should not detain us any further in view of decision of this Court in *New India Assurance Co. Ltd. v. Usha Rani* 1990 ACJ 785 (HP). This decision of the learned single Judge of this Court has been followed by a Division Bench of this Court in *New India Assurance Co. Ltd. v. Prem Dutt*, FAO (MVA) No. 118 of 1989; decided on 10.7.1997 which was followed hi *United India Insurance Co. Ltd. v. Ram Singh*, F.A.O. No. 204 of 1989;

United India Insurance Co. Ltd. v. Amar Singh, F.A.O. No. 205 of 1989; and Insurance Co. Ltd. v. Madan Singh, F.A.O. No. 206 of 1989. That being the position, the appeals filed by the insurer must fail and are accordingly dismissed.

16. So far as the maintainability of cross-objections by the claimants in the appeals filed by the insurer is concerned, this matter also has been set at rest by a Division Bench of this Court vide its judgment in National Insurance Co. Ltd. v. Rukmani Devi, F.A.O. (MVA) No. 88 of 1988 with Cross-objections No. 24 of 1989; decided on 4.9.1996, wherein it has been held as under:

Admittedly, no appeal has been filed by the claimant against the award questioning the correctness of the quantum of compensation awarded by impleading the driver and the owner of the truck as parties, neither any appeal has been filed by the owner or driver of the ill-fated truck in question of the correctness of the quantum of compensation awarded by the learned Tribunal. The claimant has not filed cross-objections in the appeal filed by the owner or driver of the truck but in the appeal filed by the insurance company. In order to grant relief to the insurance company, it is not necessary to decide the controversy regarding the correctness of the amount. Therefore, the cross-objections filed by the claimant in an appeal filed by the insurance company where the correctness of the quantum of compensation is not in dispute, are not maintainable and are liable to be dismissed on this short ground alone. On this point, we can draw support from the decision of the Kerala High Court in Oriental Insurance Co. Ltd. v. Sreedharan, 1 (1996) ACC 429 and that of the Madras High Court in United India Insurance Co. Ltd. v. M.R. Subramanian 1996 ACJ 1260 (Madras).

17. Following this decision, the cross-objections filed by the claimants are not maintainable and the same are dismissed accordingly.

18. Now, coming to two appeals filed by the owner Krishan Dutt, F.A.O. (MVA) Nos. 15 and 16 of 1989. Learned counsel for the owner made an attempt to persuade this Court after taking it through the entire evidence on record for taking a view that the accident was the result of rash and negligent driving on the part of the driver. In the alternative, it was urged that the compensation in both the cases is on higher side. After having considered the evidence on record, we are of the

view that the compensation awarded is on conservative side and the findings recorded by the Tribunal in that behalf call for no interference. It may not be out of place to mention here that it has come on record that on the date of accident, age of Hem Shankar claimant was about 25 years, who was not only working as a vegetable grower, but was also doing manual labour. Keeping in view the nature of job that he was undertaking, it cannot be said that the compensation awarded is on the higher side. In fact, looking to the nature of his work and type of injury sustained on the vital part, i.e., right hip, this Court is of the view that the amount awarded by the Tribunal below calls for no interference.

19. Similarly, in the case of Ajit Singh and other claimants, there is enough evidence to show that the deceased was working as a mechanic and was also carrying on agricultural pursuits from which he was having adequate income. That being so, it cannot be said that the compensation awarded in this case in favour of Ajit Singh and other claimants is on the high side. Accordingly, the plea to the contrary raised on behalf of the owner is also rejected.

20. As a result of the aforesaid discussion, it is clear that there is no merit in the appeals filed by the owner as well as by the insurer and similarly, cross-objection filed by the claimants in the appeals of insurance company are not maintainable. Consequently, all the four appeals and cross-objections are hereby dismissed. Costs on the parties.