

Bimla Devi and ors. Vs. Raj Kumar and ors.

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Court : Himachal Pradesh

Decided On : Aug-11-2004

Reported in : III(2004)ACC415,2005ACJ2049

Judge : V.K. Gupta, C.J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166, 171 and 173

Appeal No. : F.A.O. (MVA) No. 424 of 2002

Appellant : Bimla Devi and ors.

Respondent : Raj Kumar and ors.

Advocate for Def. : Vijay Bhatia,; Tarlok Chauhan and; Anand Sharma, Adv

Advocate for Pet/Ap. : J.L. Bhardwaj and; Raj Kumar Negi, Advs.

Disposition : Appeal allowed

Judgement :

V.K. Gupta, C.J.

1. This appeal under Section 173 of [Motor Vehicles Act, 1988](#) at the instance of the claimants is directed against the judgment and award dated 25.6.2002 passed by the learned Motor Accidents Claims Tribunal, Kinnaur Civil Division at Rampur in M.A.C. Case No. 55 of 2001. Even though vide the aforesaid judgment, the

Tribunal has allowed the claim application filed by the claimant appellants and has awarded compensation to the tune of Rs. 4,80,000 in favour of the appellant-claimants, payable by respondent No. 3, the grievance of appellants is that the aforesaid amount of compensation is on the lower side and that the same is required to be enhanced; hence this appeal.

2. In the accident which occurred on 14.2.2001, the deceased Sher Singh was driving a scooter (with due care and caution) but at about 1.30 p.m., while he was approaching Nimla, jeep No. HP 01-8407 coming from the aforesaid direction knocked down the deceased Sher Singh. He fell off the highway into a nearby nallah at a distance of 400-500 feet from the highway and as a result thereof he suffered grievous injuries and instantaneously succumbing to the same, died. The following five issues were framed by the Claims Tribunal for adjudication:

'(1) Whether Sher Singh had died on account of rash and negligent driving of vehicle No. HP 01-8407 being driven by respondent No. ?OPP

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

(3) Whether respondent No. 2 had not been in possession of a valid and effective driving licence at the time of the accident? If so, with what effect? OPR-3

(4) Whether vehicle No. HP 01-8407 was being plied in contravention of the terms and conditions of the insurance policy? OPR-3

(5) Relief.'

After returning its finding on issue No. 1 to the effect that the accident in question was caused because of rash and negligent driving of jeep No. HP 01-8407, and holding the driver of the said jeep responsible for rash and negligent driving. Insofar as issue No. 2 is concerned, the Tribunal as noticed at the outset, computed the compensation amount at Rs. 4,80,000 and the basis upon which the Tribunal arrived at this amount undoubtedly revolved around the monthly income of the deceased at Rs. 13,071 and the age of the deceased being 42 years at the time of his death. Even though the monthly income of the deceased and the age of

the deceased at the time of the death were both relevant factors, yet, for the reasons that I assign hereinbelow, the Claims Tribunal erred in computing the correct amount of compensation because it had lost sight of certain important aspects while arriving at the aforesaid figure.

3. It has undoubtedly been proved that the deceased was employed as a Junior Engineer in H.P. State Electricity Board and that he was drawing the monthly salary (gross emoluments) of Rs. 13,071. On record of the Claims Tribunal's file is the salary certificate issued by the Senior Executive Engineer, Electrical Division, H.P. State Electricity Board, Ani, District Kullu which was exhibited as Exh. PW 1/H. This evidence has not at all been either rebutted or challenged by the respondents. If the deceased was drawing the emoluments of Rs. 13,071 per month, how much was he spending upon himself and how much should he have been contributing towards the maintenance of his family comprising five claimants? By applying any yardstick, on the touchstone of any permissible parameter on this subject, 1/3rd of the gross emoluments alone can be considered as the maximum amount that the deceased would have been spending on himself and 2/3rd would thus be the amount that he should have been contributing towards the upbringing and maintenance of his family members, (five in number) who were the claimants in the claim petition.

4. I should have no hesitation, therefore, in assessing monthly dependency of the appellants-claimants, from out of the income of the deceased at Rs. 9,000, representing 2/3rd of his monthly income but I would rather keep that amount limited to Rs. 8,000 per month because in the statement of appellant No. 1 Bimla Devi, who appeared as PW 1 in the Claims Tribunal on 2.5.2002, she has deposed that the deceased was paying Rs. 8,000 to her for the maintenance of the claimants. Rs. 8,000 per month in any case, looking to the total income of Rs. 13,071 p.m. of the deceased, should be the minimum amount of monthly dependency of the claimants-appellants qua the income of the deceased. Thus, calculating the annual loss of dependency of the appellants-claimants qua the income of the deceased works out to Rs. 96,000.

5. The deceased undoubtedly was 42 years of age at the time of his death and he left behind as many as five dependants who all were dependent on the income of the deceased who was the sole breadwinner of the family. Amongst others, the deceased left behind two minor daughters, aged 5 years and 1 year, and his widowed mother. On that reckoning, therefore, applying the multiplier of 8 to the multiplicand was very unjust and unreasonable on the part of the Tribunal because in view of the aforesaid facts and circumstances multiplier of 15 should be the most appropriate and suitable multiplier. Thus, applying the multiplier of 15 to the aforesaid multiplicand of Rs. 96,000, the total compensation amount is capitalised at Rs. 14,40,000.

6. It has been submitted by the learned counsel for the appellants-claimants that the Tribunal has not awarded any interest on the compensation amount and has merely directed its payment within a particular period from the date of the passing of the award and with a further observation and direction that if this direction with respect to the payment of compensation amount is not carried out within the time frame, respondent No. 3 shall pay interest on the compensation amount at the rate of 12 per cent per annum from the date of passing of the award till realisation.

7. By now it is a settled proposition of law that under Section 171 of the [Motor Vehicles Act, 1988](#), it is the bounden duty of the Tribunal, in every case where it, while allowing an application under Section 166 of the [Motor Vehicles Act, 1988](#), grants compensation in favour of claimants, it shall also order the payment of interest in favour of the claimants on the compensation amount, which unfortunately, for totally unexplained reasons has not been done in the present case by the Claims Tribunal. Section 171 of [Motor Vehicles Act, 1988](#) is reproduced hereinbelow for ready reference:

'171. Award of interest where any claim is allowed.-Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.'

It appears that the Tribunal ignored the aforesaid mandatory and binding provision of law and omitted to pass an order fastening the liability upon the respondent No. 3 to pay interest on the compensation amount. This court considers itself bound to rectify and correct the aforesaid error which is apparent on the face of the award.

8. It is accordingly held that appellantsclaimants will be entitled to the grant of interest at the rate of 9 per cent per annum from the date of filing of the claim petition till the amount is realised.

9. The appeal is accordingly allowed to the aforesaid extent.

10. Respondent No. 3, being the insurer of the motor vehicle involved in the accident is directed to pay the enhanced compensation amount inclusive of interest liability thereupon within six weeks from today, failing which interest liability shall stand increased from 9 per cent to 12 per cent per annum.

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