

Mohar Singh Vs. Devi Ram and ors.

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Court : Himachal Pradesh

Decided On : Jun-16-2009

Judge : Sanjay Karol, J.

Appellant : Mohar Singh;united India Insurance Co. Ltd.

Respondent : Devi Ram and ors.;mohar Singh and ors.

Disposition : Appeal allowed

Judgement :

Sanjay Karol, J.

1. Present appeals arise out of the common impugned award dated 15.1.2005, passed by the Motor Accident Claims Tribunal, Kullu in Claim Petition No. 47-2003 titled as Mohar Singh v. Devi Ram and Ors. allowing the claimants application filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act') and awarding a lump sum compensation of Rs. 75,000/- to the claimants.

2. Appeal No. 149 of 2005 titled as Mohar Singh v. Devi Ram and Ors. has been filed by the claimants seeking enhancement of the amount of compensation awarded and appeal No. 179 of 2005 titled as United India Insurance Co. Ltd., has been filed by the insurer disputing its liability to pay the awarded amount of compensation.

3. Petitioner Shri Mohar Singh filed a petition under Section 166 of the Act, pleading that on 14.9.2002 at 10.00 p.m. he was travelling in Tractor No. HP-49-0213 carrying his house hold articles. The tractor owned by Shri Devi Ram was being driven by Shri Puran Chand. When the tractor was ascending near village Sheehal, it suddenly stopped and the tyres started skidding. Shri Puran Chand driver of the tractor asked him to give support to the tyres by placing stones under the same. After getting down he started placing stones under the tyres of the tractor, when the driver suddenly accelerated the vehicle due to which the tractor skidded and the petitioner got caught in between the tractor and its trolley. Also the petitioner alongwith the tractor and the trolley rolled down from the road for about 25 to 30 feet. Since in the said accident he suffered multiple injuries on his body he was immediately taken to the Community Health Centre, Banjar and then to the District Civil Hospital, Kullu, where he was treated and remained admitted from 15.9.2002 upto 19.9.2002. For further treatment, he was referred to the State Medical Hospital, IGMCH Shimla, but for lack of money he could not travel and get further and better treatment at Shimla. Due to the injuries he sustained a permanent disability of 41%. He was having six dependents being 4 daughters, one son and a wife. The petitioner was working as mason and having income of approximately Rs. 3000/- per month. Apart from the same, he was also having income of Rs. 15,000/- to Rs. 20,000/- per month from agricultural source.

4. The petition was opposed by the respondents No. 1 & 2 being the driver and the owner, who while admitting the occurrence of the accident disputed the negligence of the driver.

5. The vehicle was insured with M/s. United India Insurance Co. Ltd. and in a separate reply filed by them, while admitting the factum of the vehicle being insured disputed the liability on the ground that the material terms and conditions of the policy stood breached by the insured.

6. Based on the pleadings of the parties, the Court below framed the following issues:

1. Whether the accident took place due to rash and negligent driving of tractor bearing regn. No. HP-49-0213 being driven by respondent No. 2 in which

petitioner suffered injuries? ...OPP

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

3. Whether the petition is not maintainable as alleged? ...OPR-3

4. Whether the tractor in question was not insured with respondent No. 3, as alleged? ...OPR-3

5. Whether respondent No. 2 at the time of accident was not holding valid and effective driving licence, if so, its effect? ...OPR-3

6 Whether the tractor in question at the time of the accident was being driven in contravention of the terms and condition of the insurance policy, if so, its effect? ...OPR-3

7. Opportunity to lead evidence was afforded to the parties. Relying upon the material placed on record by the parties, the Tribunal concluded that at the time of the accident the claimant was neither sitting nor traveling on the Tractor, but infact he was putting stones to support the tyres of the Tractor, hence he was not a passenger but a third person who suffered injuries in the accident which took place due to the rash and negligent driving of the driver Shri Puran Chand. The Tribunal held the driver negligent in driving the vehicle and the claimants were entitled to a total compensation of Rs. 75,000/- as there was no material on record to prove the income of the claimant. The decision, however, was based by taking into account the permanent disability of the claimant, which was evaluated at 41% in terms of disability certificate Ext.PW-3/A.

8. Mr. G. D. Sharma, learned Counsel has assailed the award on the ground (i) that the claimant was a gratuitous passenger, hence the insurer was not liable to have indemnified the insured. (ii) In any event, the driver was not authorised to have driven the vehicle in question as he was possessing a licence to only drive a light motor vehicle. Thus, material terms and conditions of the policy stood breached. (iii) in any event, compensation awarded is just, fair and reasonable.

9. Per contra, Mr. R. K. Gautam, learned Senior Counsel, while defending the award on the findings assailed by Mr. G. D. Sharma, learned Counsel for the insurer, has referred to the decision rendered by this Court in Sheela Kaundal v. Dhani Ram and the Apex Court in Sunil Kumar v. Ram Singh Gaud and Ors. : 2007(12)SCALE762 , justifying further enhancement of the awarded amount.

10. I have heard learned Counsel for the parties and perused the record.

11. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitle the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in the accident. On account of the injuries, the claimant may suffer consequential losses such as (i) loss of earnings; (ii) expenses on treatment which include medical expenses, transportation, special diet, attendant charges, etc; (iii) loss or diminution in the pleasures of life by loss of a particular part of the body; and (iv) loss of future earning capacity. The damages can be pecuniary as well as non pecuniary but all have to be assessed in rupees and paise. It is impossible to equate human suffering and personal deprivation with money. However, this is what Motor Vehicles Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be only token damages.

12. From the evidence on record, it stands proved that in the accident the claimant suffered permanent disability of 41%. Ext.PW3/ A proved by Dr. Baldev Kumar (PW-3) evidences the disability on the right lower limb starting from the hips. It is

also evident from the deposition of the claimant Mohar Singh (PW-1) that due to the accident he sustained injuries and remained admitted in the hospital at Kullu from 15.9.2002 upto 19.9.2002, where he was treated. He could not undertake further treatment at IGMCH, Shimla, due to lack of money. Due to the injuries sustained he cannot undertake any work.

13. It is true that claimant has not placed on record any evidence to prove the medical expense incurred by him or any document to substantiate his income. However, it is equally true that the claimant has produce on record parivar register Ext.PX from which it is evident that the claimant has three daughters, one son and a wife. It is not the case of the either side that any of the children or family members are working. In fact the evidence shows that none of the family members are working. It is also proved from the record that initially the claimant had to undertake treatment at the Community Health Centre, Banjar and later on was shifted to the District Hospital at Kullu. Some guess work is required to be carried out while assessing damages for medical expenditure. The claimant aged 35 years was working as mason at the time of accident. With regard to the loss of earning capacity, the Doctor has deposed as under:

I cannot say how and to what extent this disability would affect the earning and working capacity of Mohar Singh unless I am told about his nature of work and occupation.

14. Unfortunately, the fact that the claimant was working as a mason was not disclosed to the Doctor at the time of his examination but, however, from the disability certificate, it is apparent that he has suffered serious injuries on his right lower limb starting around his hips. The claimant obviously cannot do hard work.

15. This Court in Sheela Kaundal (supra) has held that the claimant would be entitled to compensation for expenses on medical treatment which would include the cost of services rendered by the attendants. Even gratuitous service rendered by the attendants has to be compensated for the reason that the tortfeasor cannot be given advantage of the gratuitous services rendered by the family members.

16. The claimant would be entitled to expenses of medicines, transportation etc. In the present case, there is no documentary evidence to the said effect but however, one cannot ignore the fact that the petitioner comes from a remotest corner of the State. He is a resident of a place which is far away from Kullu. He had to be brought to the Community Health Centre, Banjar and then to the District Hospital at Kullu. Unfortunately, he had no money to undergo further treatment at Shimla. Coming from a rural and illiterate background it is quite possible that the claimant may not have retained the bills for the expenditure incurred by him. He may even be not aware of the necessity to retain or his rights to claim statutory compensation. Taking into account the entire attending circumstances, in my view, the petitioner would be entitled to compensation under the said head for a sum Rs. 10,000/-. This would include all expenses incurred towards transportation, attendant charges, special diet and medical treatment.

17. With regard to the monetary loss and income of the estimated future, loss of income, it has come on record that the claimant suffered 41% permanent disability on the right lower limb. Even though there is no evidence on record to prove that the petitioner had to undertake further treatment but however, the fact remains that the petitioner cannot carry out work of a mason any longer. The petitioner has small children to look after. He has four daughters and one son. Due to the accident, his prospectus of having higher income with the passage of time stands seriously impaired. The fact that the petitioner was employed is not in dispute. The dispute is only with regard to the nature of work being performed by him. In the year 2002, minimum wages being paid by the State even to a daily wager was notified to be Rs. 100/- per day. The petitioner, therefore, can be held to have an income of Rs. 3000/- per month. The petitioner cannot perform hard work and work as a labourer. His disability even if it were to be taken to be 25% of the whole body and the compensation assessed accordingly, the loss per month, would come to Rs. 750/-. From the same, even if 1/3rd is deducted, the loss would come to Rs. 500/- per month. The claimant was 36 years of age at the time of accident and it is reasonable to apply a multiplier of 15 and thus the compensation on account of loss of future income would come to Rs. $500 \times 12 \times 15 = \text{Rs. } 90,000/-$.

18. The petitioner has suffered pain and agony. The accident took place on 14.9.2002. The disability certificate was issued on 1.5.2004. Unfortunately what treatment was given to the petitioner, pursuant to his discharge from the hospital till the said date is also not evident from the record. But, however, judicial notice can be taken of the fact that all was not well with the petitioner, at least till 2004. He had to travel to Kullu to appear before the Board and obtain certificate. While being discharged from the hospital on 19.9.2002, as is evident from Annexure P-2, the petitioner was diagnosed for fracture on neck and femur and it was mentioned that the petitioner needs ORIF. The petitioner has to be compensated for the discomfort and loss of enjoyment of life which he suffered due to disability caused by the accident. As per the disability certificate, the flexibility and the movement of the limb is restricted. He obviously cannot do normal job and also lead a normal life as he was doing earlier. He has to undergo this deprivation for the rest of his life and would never be a complete human being. Pain and suffering, keeping in view the injuries sustained by him is likely to increase with old age. Keeping in view all the facts and circumstances, it would be appropriate to assess the damages caused on account of loss of amenity, loss of enjoyment of life and suffering of body pain to be Rs. 1,25,000/-. Thus, the total compensation payable to the claimant works out to be Rs. 10,000/- + Rs. 90,000/- + Rs. 1,25,000/- = Rs. 2,25,000/-. The compensation awarded by the Tribunal is on the lower side.

19. It stands proved that at the time of accident the petitioner was not sitting on the tractor. In fact on the asking of the driver, he had got down and tried to stop the tractor from skidding by placing the stones under the tyres. Unfortunately, due to the negligence of the driver, who did not examine himself before the Tribunal, the petitioner sustained injuries.

20. Therefore, it can not be held that the petitioner was travelling as a gratuitous passenger at the time of accident. The contention needs to be rejected.

21. The driver was possessed to have driving licence Ext.RW-2/A. The said licence on 6.4.2002 clearly authorizes the driver to drive 'car/jeep/tractor/light motor vehicles.'

22. Section 2(21) and Section 10 of the Act reads as under:

(21) 'light motor vehicle' means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller, the unladen weight of any of which, does not exceed 2[7500] kilograms.'

10. Form and contents of licences to drive: (1) Every learner's licence and driving licence,, except a driving licence issued under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- (e) medium goods vehicle;
- (f) medium passenger motor vehicle;
- (g) heavy goods vehicle;
- (h) heavy passenger motor vehicle;
- (i) road roller;
- (j) motor vehicle of a specified description.

23. Hence, it cannot be said that the driver was not possessing a valid and effective driving licence to drive the vehicle at the time of accident. The driver was not required to have a separate endorsement to drive the tractor as he was fully authorized to drive the same. The wordings, car, jeep and tractor have not been scored off on the licence, which in the case of motorcycle/scooters has been done

S0.

24. Keeping in view the aforesaid provisions it cannot be said that the driver was not authorised to drive a tractor. Law creates a separate category for motor cycle without gear and with gear but in the instant case he is authorised to drive a tractor.

25. For the aforesaid reasons, the appeal filed by the insurer is dismissed and the appeal filed by the claimant is allowed.

26. The impugned award is modified accordingly.

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