

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 255 of 2012 a/w
FAOs No. 74, 75 of 2013,
194, 195 & 270 to 280 of 2014

Reserved on : 22.08.2014

Decided on: 29.08.2014

1. FAO No. 255 of 2012

Sh. Prabhu Lal ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
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2. FAO No. 74 of 2013

Sh. Kedar Singh ...Appellant.

Versus

State of H.P. & another ...Respondents.
.....

3. FAO No. 75 of 2013

Sh. Padam Dass ...Appellant.

Versus

State of H.P. & another ...Respondents.
.....

4. FAO No. 194 of 2014

Kumari Preeti & others ...Appellants.

Versus

The Executive Engineer & another ...Respondents.
.....

5. FAO No. 195 of 2014

Smt. Suna Mani & others ...Appellants.

Versus

The Executive Engineer & another ...Respondents.
.....

6. FAO No. 270 of 2014

Dagu Ram ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

7. FAO No. 271 of 2014
Shri Puran Dass ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

8. FAO No. 272 of 2014
Budhi Singh ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

9. FAO No. 273 of 2014
Tawarku Ram ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

10. FAO No. 274 of 2014
Smt. Anita Devi ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

11. FAO No. 275 of 2014
Sain Ram ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

12. FAO No. 276 of 2014
Shri Chhering Dorje ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

13. FAO No. 277 of 2014
Shri Shardu Ram ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
.....

14. FAO No. 278 of 2014
Shri Debu ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
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15. FAO No. 279 of 2014
Ganga Ram ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
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16. FAO No. 280 of 2014
Shri Ram Singh ...Appellant.

Versus

The Executive Engineer & another ...Respondents.
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Coram
The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.
Whether approved for reporting? Yes.
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FAO No. 255 of 2012
For the appellant: Mr. V.D. Khidtta, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General,
with Mr. J.K. Verma, Deputy Advocate
General.
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FAOs No. 74 & 75 of 2013
For the appellant(s): Mr. Ashwani Kaundal, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General,
with Mr. J.K. Verma, Deputy Advocate
General.
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FAOs No. 194, 195 & 270 to 280 of 2014
For the appellant(s): Mr. B.N. Sharma, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General,
with Mr. J.K. Verma, Deputy Advocate
General.

Mansoor Ahmad Mir, Chief Justice

All these sixteen appeals have been preferred by the claimants against the awards, passed on different dates, in the Claim Petitions, by the Motor Accident Claims Tribunal, Kinnaur Civil Division at Rampur Bushahr, H.P. (hereinafter referred to as “the Tribunal”), which are outcome of a motor vehicular accident involving one vehicle, i.e. Tipper, bearing registration No. HP-38A-3424, (hereinafter referred to as the impugned awards) on the grounds taken in the memo of appeals. Thus, I deem it proper to determine all these sixteen appeals by a common judgment.

2. **FAOs No. 255 of 2012, 74 and 75 of 2013** are outcome of the impugned awards passed in M.A.C. Petitions No. 38 of 2010, 86 of 2010 and 63 of 2010, respectively, whereby the claim petitions came to be dismissed by the Tribunal.

3. By the medium of **FAOs No. 194, 195 and 270 to 280 of 2014**, the claimants have questioned the impugned awards made by the Tribunal in M.A.C. Petitions No. 0100026, 0100023, 0100027, 0100079, 0100047, 0100046, 0100030, 0100043, 0100066, 0100042, 0100078, 0100044 and 0100077 of 2010, respectively, on the ground of adequacy of compensation.

Brief Facts:

4. The claimants-injured and the dependents of deceased, namely Shri Mangat Ram and Shri Vidya Chand, being the victims of the motor vehicular accident, which has allegedly been caused by

the driver, namely Shri Ramesh Kumar (who also died in the accident), while driving the vehicle-Tipper belonging to HPPWD, bearing registration No. HP-38A-3424 (mentioned as HP-34A-3424 in the claim petitions), rashly and negligently on 22nd March, 2010, at about 5.30 P.M., at Gathada Khad; the vehicle went off the road and fell into a gorge due to which some of the occupants sustained injuries and Shri Mangat Ram and Shri Vidya Chand succumbed to the injuries; filed claim petitions, before the Tribunal for grant of compensation, as per break-ups given in the respective claim petitions.

5. The respondents resisted the claim petitions on the grounds taken in the respective memo of objections.

6. The Tribunal, on the pleadings of the parties, framed three issues, which are common, though separately, in all the claim Petitions except in M.A.C. Petition No. 0100023 and 0100026 of 2010. Therefore, it is apt to reproduce the issues framed in M.A.C. Petition No. 0100027 of 2010 herein:

"1. Whether the petitioner had sustained injuries due to rash and negligent driving of Tipper No. HP-34A- 3424, being driven by its driver (since deceased), as alleged? OPP

2. If issue No. 1 is proved, to what amount of compensation the petitioner is entitled to? OPP

3. Relief."

7. The following issues, which are common, came to be framed separately in M.A.C. Petitions No. 0100023 and 0100026 of 2010:

"1. Whether late Shri Vidya Chand had died on account of injuries sustained by him due to rash and negligent driving of Tipper No. HP-34A-3424,

being driven by its driver (since deceased), as alleged? OPP

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

3. Relief."

8. The parties have led evidence and have placed on record various documents in support of their claim petitions. After scanning the evidence, oral as well as documentary, the Tribunal made the impugned awards.

9. The respondents have not questioned the impugned awards on any count, thus, have attained finality so far it relate to them.

FAOs No. 194, 195 and 270 to 280 of 2014

10. These appeals have been preferred by the claimants-appellants against the impugned awards on the ground of adequacy of compensation.

11. I have gone through the averments contained in the claim petitions, evidence led and am of the considered view that the Tribunal has granted compensation to the claimants more than which was required to be granted in each of the claim petitions vide impugned awards.

12. It was for the claimants-appellants to carve out a case for interference on the ground of adequacy of compensation, which they have failed to do so. It appears that the Tribunal, after making the guess work and taking clue from the documents, has awarded compensation in the claim petitions vide separate awards, which, by no stretch of imagination, can be said to be inadequate. The perusal of the files do disclose that the respondents-State have also

awarded ₹ 5,000/- as interim relief to the claimants, mention of which has been made in the impugned awards.

13. I deem it proper to place on record that had the respondents-State questioned the impugned awards, may be, there would have been interference. But, they have not questioned the same, thus, have attained finality so far it relate to them.

14. Having said so, FAOs No. 194, 195 and 270 to 280 of 2014 are dismissed and the impugned awards are upheld.

FAOs No. 255 of 2012, 74 and 75 of 2013:

15. These appeals are directed against the impugned awards passed by the Tribunal in M.A.C. Petitions No. 38, 86 and 63 of 2010, whereby the claim petitions filed by the claimants-appellants came to be dismissed by the Tribunal.

Issue No. 1:

16. The Tribunal has dismissed the claim petitions on the ground that the accident has occurred not because of the rash and negligent driving of the offending vehicle-tipper by its driver, but due to the mechanical defect in the vehicle. The Tribunal has also held that the claimants have sustained injuries, were hospitalized and undergone pains and suffering.

17. It is apt to record herein that this Court in a bunch of appeals, FAO No. 283 of 2012-A being the lead case, titled as Shri Tawarku Ram versus The Executive Engineer, has determined the issue vide judgment, dated 20th December, 2012, and directed the Tribunal to examine the issue afresh.

18. The Tribunal, after examining the pleadings and the

evidence led by the parties, held that the driver was negligent. The respondents-State has not questioned the said findings. Thus, it can be safely held that the driver has driven the vehicle rashly and negligently.

19. Having said so, the findings returned on issue No. 1 are set aside.

Issue No. 2:

20. In MAC Petition No. 38 of 2010, subject matter of **FAO No. 255 of 2012**, the Tribunal has held in para 15 of the impugned award that the injured had sustained injuries, suffered fractures in leg and arm and had taken note of the discharge slip, Ext. PW-1/C, which do disclose that the claimant-injured remained in hospital w.e.f. 22nd March, 2010 to 29th March, 2010. The claimant has also placed on record the medical bills to the tune of ₹ 7,742/-. Thus, the claimant was at least entitled to the compensation, i.e. medical expenses, was in hospital for seven days, had undergone pains and suffering and was attended upon by the attendant. It is not known whether the claimant-injured has suffered permanent disability. However, keeping in view the fact that he was admitted in hospital for seven days read with the fact that he has spent the amount on his treatment and undergone pains and suffering and has suffered fractures in his arm and legs, I deem it proper to award minimum compensation to the tune of ₹ 25,000/- to the claimant-injured by making guess work.

21. In the award in MAC Petition No. 86 of 2010, which is impugned in **FAO No. 74 of 2012**, the Tribunal, in para 18, has held

that the injured has sustained injuries. Ext. PW-2/B is the photocopy of MLC. The injured was in hospital w.e.f. 22nd March, 2010 to 29th March, 2010 and was confined to bed up to 23rd April, 2010. Thus, keeping in view the medical certificate at page 31 of the record read with Ext. PW-1/A, by making guess work, I deem it proper to award compensation to the tune of ₹ 25,000/- in favour of the claimant-injured.

22. In MAC Petition No. 63 of 2010 (subject matter of **FAO No. 75 of 2012**), the Tribunal, in para 15 of the award, has held that the claimant-injured has sustained multiple injuries. Ext. PW-2/D is the discharge slip, in terms of which the claimant-injured has sustained multiple injuries, was admitted in hospital w.e.f. 22nd March, 2010 to 23rd March, 2010. It has also been averred in the petition that he was confined to the bed till 16th May, 2010, there is no rebuttal to the same. Ext. PW-2/C is the copy of MLC, which do disclose that the claimant-injured has sustained injuries and has suffered pain and sufferings.

23. In the given circumstances, I deem it proper to award compensation to the tune of ₹ 25,000/- in favour of the claimant-injured, after making the guess work.

24. Viewed thus, the impugned awards made in MAC Petitions No. 38, 86 and 63 of 2010 are set aside, the claim petitions are allowed and compensation to the tune of ₹ 25,000/- is awarded in favour of each of the claimants-injured-appellant in FAOs No. 255 of 2012, 74 and 75 of 2013 and against respondents No. 1 and 2, who are directed to satisfy the same within six weeks.

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25. Send down the records after placing copy of the judgment on each of the files.

(Mansoor Ahmad Mir)
Chief Justice

August 29, 2014
(rajni)