

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.389 of 2010

Decided on: August 29, 2014.

Ibrahim Bharti and others.

...Appellants

VERSUS

Mohamad Rafi and others.

...Respondents.

Coram

The Hon'ble Mr.Justice Mansoor Ahmad Mir, Chief Justice.

Whether approved for reporting? No.

For the Appellants: Mr. Suneet Goel, Advocate.

For the Respondents: Mr. J.L. Bhardwaj, Advocate, for
respondent No.1.
Mr.Naveen K. Bhardwaj, Advocate, for
respondent No.2.
Mr.J.S. Bagga, Advocate, for respondent
No.3.

Mansoor Ahmad Mir, C.J. (Oral)

By the medium of this appeal, the appellant has questioned the award dated 29.7.2010, passed by the Motor Accident Claims Tribunal, Kullu, Himachal Pradesh, (for short, the Tribunal), in Claim Petition No.48 of 2007, titled as Mohamad Ali Bharti vs. Mohamad Rafi and others, on the ground of adequacy of compensation, (for short, 'the impugned award').

2. Brief facts of the case are that the appellant/claimant had filed a claim petition for grant of compensation to the tune of Rs.10,06,000/- with interest at the rate of 18% on the ground that the driver, namely, Gian

...2...

Chand, (respondent No.2), had driven the truck bearing registration No.HP-24-7253 rashly and negligently on 13th April, 2007, lost control over it and damaged two storeyed house/shop of the claimant, situated at Bajaura Phati, Hat Kothi Bajaura, Kullu.

3. The owner, the driver and the insurer resisted the claim petition on various grounds, by filing separate replies.

4. On the pleadings of the parties, the following issues were settled by the Tribunal:

“1. Whether damage of house has been caused due to rash and negligence of respondent No.2 Gian Chand, driver of the vehicle No.HP-24-7253? OPP

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

3. Whether the petition is bad for mis-joinder and non-joinder of necessary party? OPR 1 and 2.

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

5. Whether the offending vehicle was being plied in contravention of the provisions of the Motor Vehicles Act, if so its effect? OPR-3.

6. Relief.”

5. Parties led their evidence. The Tribunal, after scanning the evidence, held that the claimants have proved that the driver of the offending truck, namely, Gian Chand had driven the said truck rashly and negligently and

...3...

accordingly, decided issue No.1 in favour of the claimant and against the respondents.

6. The Tribunal has also decided issues No.3, 4 and 5 in favour of the claimant.

7. The onus to prove issue No.3 was on the owner and the driver, which they could not discharge. Therefore, the Tribunal has rightly held that the owner and the driver have failed to prove that the claim petition suffers from misjoinder and non-joinder of necessary parties.

8. To prove issues No.4 and 5, the onus was on the insurer. The Tribunal after scanning the evidence, held that the driver was having effective driving licence, the offending vehicle was not being plied in contravention of the provisions contained in the Motor Vehicles Act and the owner has not committed any willful breach of the terms and conditions contained in the insurance policy.

9. The insurer, the owner and the driver have not questioned the impugned award on any count.

10. Having said so, the findings returned by the Tribunal on issues No.3, 4 and 5 are upheld.

11. The claimant has questioned the findings recorded by the Tribunal under issue No.2 on the ground of adequacy of compensation. The claimant has examined

...4...

PW-3 Rajeev Sharma, who has assessed the damage caused to the claimant. The insurer/respondent No.3 has also examined RW-3 Sita Ram Sharma, who has made assessment of the damage. PW-3 Rajeev Sharma has assessed estimated cost for the reconstruction of existing damaged building as per Ext.PW-3/B at Rs.10,06,000/- and has also proved the estimated depreciated cost of existing building as contained in Ext.PW-3/C.

12. On the other hand, RW-3 Sita Ram Sharma, the expert examined by the insurer, has assessed the loss, caused to the property of the claimant, vide Ext.RW-3/A, to the tune of Rs.15,979/-.

13. The Tribunal, after taking into consideration the evidence adduced by both the parties, held that the claimant is entitled only to the actual damage caused to the property. But the Tribunal has lost sight of a very important fact that while making repairs, certain additions/alterations/demolition were made by the claimant.

14. It is submitted that the appeal came up before the Lok Adalat on 23rd November, 2013 and the insurer had agreed to pay Rs.50,000/- in addition to the amount already awarded, but could not be settled and the appeal

...5...

was listed on 25th July, 2014, on which date it was adjourned to 1st August, 2014. On 1st August, 2014, the learned counsel for the insurer sought time to seek instructions. Thereafter, the appeal was adjourned twice and was listed today for hearing. Today, the learned counsel for the insurer stated that he is under instructions to contest the appeal.

15. By guess work it can be said that the claimant had to make repairs of the damaged house/shop, which would have taken at least a few months, thus, he would have been deprived of some income during the period. It is also a fact that while making repairs, additions/alterations would have been done by the claimant, as discussed hereinabove.

16. In view of the above discussion, without entering into the details, I deem it proper to modify the impugned award by directing the insurer to pay to the claimant Rs.50,000/- in lump sum, in addition to the amount awarded by the Tribunal, within eight weeks from today and in default, the amount would carry 7% interest from today till realization. The amount, as indicated above, be deposited by the insurer within a period of eight weeks before the Registry and, on deposit, the Registry is directed to release the same to the claimant.

...6...

17. The appeal is allowed and the impugned award is modified, as indicated above.

29th August, 2014.
(filak)

**(Mansoor Ahmad Mir),
Chief Justice.**