

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
FAO No.24 of 2011
Date of decision: 29.07.2016

| | | |
|-----------------------|--------|-------------------|
| Lal Singh | Versus |Appellant |
| Kamal Devi and others | | Respondents |

Coram:

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

Whether approved for reporting? Yes.

For the appellant: Mr.Lalit Sehgal, Advocate.

For the respondents: Nemo for respondents No.1 and 2.
Mr.G.C. Gupta, Senior Advocate, with
Ms.Meera Devi, Advocate, for
respondent No.3.
Mr.Lalit K. Sharma, Advocate, for
respondent No.4.

Mansoor Ahmad Mir, Chief Justice (oral)

This appeal is directed against the award, dated 22nd December, 2010, passed by the Motor Accident Claims Tribunal(II), Mandi, District Mandi, H.P., (for short, "the Tribunal") in Claim Petition No.5 of 2001, titled Lal Singh vs. Kamal Dev and others, whereby the claim petition came to be dismissed, (for short the "impugned award").

2. Facts of the case, in brief, are that on 1.3.2000, deceased Ramesh Kumar, while driving truck bearing No.HP-24-3425, was going from Barmana to Lakhiani Baroti. When the said truck reached near Dehar, another truck bearing registration No.HP-23-3752, being driven by its driver, namely,

Kamal Dev, rashly and negligent, hit the truck of deceased Ramesh Kumar, as a result of which the truck (HP-24-3425) fell down the hill, causing death of driver Ramesh Kumar, constraining his mother and father to file the Claim Petition before the Tribunal claiming compensation to the tune of 10.00 lacs, as per the break-ups given in the claim petition. During the pendency of the Claim Petition, the mother of the deceased Ramesh Kumar expired and was deleted from the array of claimants.

3. The claim petition was resisted by the respondents and following issues were framed:

- “1. Whether respondent No.1 was driving truck No.HP-23-3752 on 1.3.2000 near village Dehar in a rash and negligent manner resulting in causing death of Ramesh Kumar son of the petitioner? OPP*
- 2. If issue No.1 is proved, whether the petitioner is entitled for compensation, if so from whom? OPP*
- 3. Whether there has been any breach of the terms and conditions of the insurance Policy? OPR*
- 4. Whether respondent No.1 was not holding valid and effective driving license at the time of accident? OPR-3*
- 5. Relief.”*

4. The claimants examined as many as five witnesses, namely, PW-1 Dr. Deepak Malhotra, PW-2 Ashwani Kumar, PW-3 Lal Singh (claimant), PW-4 Ajit Ram and PW-5 Ram Singh.

Respondents also examined RW-1 Sukh Ram and RW-2 Kamlesh Kumar.

5. The Tribunal, after scanning the evidence, held that the claimant has failed to prove that the driver of the offending truck, namely, Kamal Dev, had driven the offending truck bearing No.HP-23-3752 rashly and negligently and accordingly, dismissed the claim petition.

6. The findings recorded by the Tribunal are erroneous and against the concept of granting compensation. The Tribunal, while dismissing the claim petition, seems to have applied the standard of proof required in criminal proceedings, which is against the spirit of awarding compensation in accident cases. The Tribunal has to keep in mind that the victims of a vehicular accident have to establish *prima facie* that the injury or the death was due to the rash and negligent driving of a motor vehicle.

7. It is beaten law of the land that the Courts, while determining the cases of compensation in vehicular accidents, must not succumb to the niceties and hyper technicalities of law. It is also well established principle of law that negligence in vehicular accident cases has to be decided on the hallmark of preponderance of probabilities and not on the basis of proof beyond reasonable doubt. Furthermore, the claimants claiming

compensation in terms of Section 166 of the Motor Vehicles Act, 1988, (for short, the Act), is not to be seen as an adversarial litigation, but is to be determined while keeping in view the aim and object of granting compensation.

8. My this view is fortified by the judgment of the Apex Court in **Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another, (2013) 10 SCC 646.**

9. The Apex Court in **Savita vs. Bindar Singh & others, 2014 AIR SCW 2053**, has held that at the time of fixing compensation, courts should not succumb to niceties or technicalities of law. It is apt to reproduce paragraph 6 of the said decision hereunder:

"6. After considering the decisions of this Court in Santosh Devi (Supra) as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on

assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."

10. A reference may also be made to the decision of the Apex Court in **Sohan Lal Passi v. P.Sesh Reddy and others, AIR 1996 Supreme Court 2627**, in which, in paragraph 12, it was observed that the courts, while deciding claim petitions, must keep in mind that the right of the claimants is not defeated on technical grounds. Relevant portion of paragraph 12 of the said decision is reproduced hereunder:

"12. While interpreting the contract of insurance, the Tribunal and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to

the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."

11. This Court also, in the recent past, in series of judgments, has followed the similar principle and held that granting of compensation is just to ameliorate the sufferings of the victims and compensation is to be granted without succumbing to the niceties of law, hyper-technicalities and procedural wrangles and tangles.

12. In the instant case, the claimant has specifically pleaded in the claim petition that the accident had taken place due to the rash and negligent driving of driver namely Kamal Dev. Respondents have denied the said factum, but mere denial is not sufficient to conclude that the offending truck was not being driven rashly and negligently at the time of accident. The claimant has examined PW-4 Ajit Ram, who has clearly stated that the driver of the offending truck No.HP-23-3752 had hit the truck being driven by deceased Ramesh Kumar, as a result of which the truck rolled down the hill resulting into the death of Ramesh Kumar. RW-2 Kamlesh Kumar, who was conductor with truck No.HP-24-3425, has stated that the driver of the offending truck, while driving the

offending truck bearing No.HP-23-3752 rashly and negligently, hit the truck bearing No.HP-24-3425, as a result of which the said truck rolled down the road.

13. In addition to above, statements of PW-1 Dr.Deepak Malhotra, PW-3 Lal Singh (claimant), PW-4 Ajit Ram and PW-5 Ram Singh do establish that the deceased Ramesh Kumar had died in a vehicular accident and there is sufficient evidence on the file to *prima facie* conclude that the accident was the outcome of rash and negligent driving of the driver, namely, Kamal Dev (driver of truck No.HP-23-3752).

14. The Tribunal has not properly appreciated the statements of PW-4 Ajit Ram and RW-2 Kamlesh Kumar, while dismissing the claim petition. On the contrary, the statements of these witnesses do established, *prima facie*, that the driver, namely, Kamal Dev hit the truck being driven by deceased Ramesh Kumar, as a result of which it rolled down and driver Ramesh Kumar died on the spot.

15. Viewed thus, the findings recorded by the Tribunal on issue No.1 are set aside and it is held that the accident was the outcome of rash and negligent driving of driver, namely, Kamal Dev, who, at the relevant time, was driving truck bearing No.HP-23-3752, in which Ramesh Kumar sustained injuries and succumbed to the same.

16. Before issue No.2 is taken up, I deem it proper to deal with other issues.

17. Respondents have not led any evidence to prove that the truck bearing No.HP-23-3752 was being driven in violation of the terms and conditions contained in the insurance policy. Accordingly, the findings returned by the Tribunal on this issue are upheld.

18. It was for the respondents to plead and prove that the driver of the offending truck, namely, Kamal Dev was not having a valid and effective driving licence, has not led any evidence. Accordingly, the findings returned by the Tribunal on this issue are also upheld.

19. It is also not out of place to record herein that the findings recorded by the Tribunal on issues No.3 and 4 have not been challenged by the original respondents, either by way of appeal or cross objections. Thus also, the findings on issues No.3 and 4 merit to be upheld and are upheld accordingly.

20. Coming to issue No.2, the factum of insurance is admitted. The deceased was 24 years of age, was driver by profession and was bachelor at the time of death. By guess work, the monthly income of the deceased cannot be said to be less than Rs.5,000/-. Since the deceased was a bachelor, as per the mandate of the Apex Court in **Sarla Verma (Smt.) and**

others versus Delhi Transport Corporation and another, reported in **AIR 2009 SC 3104**, upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others versus Madan Mohan and another**, reported in **2013 AIR (SCW) 3120**, 50% amount has to be deducted from the income of the deceased towards his personal expenses. Thus, the monthly loss of source of dependency to the claimant can be said to be Rs.2,500/-.

21. The deceased was 24 years of age at the time of death, therefore, as per the dictum of the Apex Court in Sarla Verma's case supra and 2nd Schedule attached to the Act, multiplier of 15 is just and appropriate and is applied in the instant case.

22. In view of the above, the claimant is held entitled to $Rs.2500 \times 12 \times 15 = Rs.4,50,000/-$ as compensation, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till deposit.

23. Having said so, the appeal is allowed and the impugned award is set aside. Consequently, the claim petition is allowed and the insurer is saddled with the liability. The insurer is directed to deposit the compensation amount, alongwith up-to-date interest, in the Registry of this Court, within a period of eight weeks from today and on deposit, the Registry is directed to release the amount in favour of the claimant forthwith.

24. The appeal is disposed of accordingly.

July 29, 2016
(tilak)

(Mansoor Ahmad Mir)
Chief Justice