

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
FAO No.117 of 2012 &
CO No.251 of 2012
Decided on : 28.10.2016

The New India Assurance Co. Ltd.Appellant
Versus	
Ruma Kaushik and others Respondents

Coram:

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

Whether approved for reporting? Yes.

For the appellant: Mr.B.M. Chauhan, Advocate.

For the respondents: Mr.Satyen Vaidya, Senior Advocate,
with Mr.Vivek Sharma, Advocate, for
respondents No.1 and 2.
Mr.Naveen K. Bhardwaj, Advocate,
for respondent No.3.

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 27th December, 2011, passed by Motor Accident Claims Tribunal, Shimla, District Shimla, H.P., (for short, the Tribunal), whereby compensation to the tune of Rs.24.00 lacs, without interest, and costs to the tune of Rs.5,000/-, came to be awarded in favour of the claimants, and the insurer was saddled with the liability, with right of recovery, (for short, the impugned award).

2. The driver-cum-owner has not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to him.

3. Feeling aggrieved, the insurer has challenged the impugned award by way of instant appeal, on the grounds taken in the memo of appeal.

4. The claimants have also questioned the impugned award by the medium of Cross Objections No.251 of 2012, on the ground of adequacy of compensation.

5. Claimants, being the widow and the son of deceased Sandeep Kaushik, invoked the jurisdiction of the Tribunal, under Section 166 of the Motor Vehicles Act, 1988, (for short, the Act), for grant of compensation to the tune of Rs.40.00 lacs, as per the break-ups given in the claim petition.

6. Respondents resisted the claim petition by filing replies.

7. Following issues were framed by the Tribunal:

- "1. Whether Sh. Sandeep Kaushik had died due to rash and negligent driving of Mahindra Pik-up No.CH-03X-3606 by respondent No.1.? OPP.

2. If issue No.1 is proved, to what amount of compensation the petitioners are entitled to and from whom? OPP.
3. Whether the accident took place due to rash and negligent driving of car No.HP-03C-2700 by Sh.Sandeep Kaushik? OPR-1
4. If issue No.3 is proved in affirmative, whether the respondents are not liable to pay compensation as alleged? OPR-1
5. Whether the respondent No.1 was not holding a valid and effective driving licence at the relevant time? OPR-2
6. Whether the vehicle in question was being driven at the time of accident in contravention of the terms and conditions of the insurance policy, if so its effect? OPR-2
7. Whether the petition is bad for non-joinder of necessary parties? OPR-2
8. Relief."

8. Claimants examined six witnesses, i.e. PW-1 HHC Jeet Singh, PW-2 Sanjay Jaicte, PW-3 Vimal Gupta, PW-4 Dr.Parvinder Singh, PW-5 Ruma Kaushik (claimant) and PW-6 Ram Swaroop. Respondents have examined three witnesses including respondent No.1 Suraj Pal (RW-1), Ravi Dutt (RW-2) and Dr.Mohan Singh Nijjar (RW-3).

9. The Tribunal, after examining the pleadings and the evidence, held that the accident was the outcome of rash and negligent driving of the driver of the offending vehicle, namely, Suraj Pal. There is no dispute about the said

findings. Accordingly, the findings returned by the Tribunal on issues No.1 and 3 are upheld.

10. Before issue No.2 is dealt with, I deem it proper to deal with issues No.4 to 7.

11. Onus to prove issue No.4 was on respondent No.1, i.e. owner-cum-driver of the offending vehicle. The Tribunal has decided the said issue against the owner-cum-driver, has not questioned the said findings. Accordingly, the findings returned on issue No.4 are upheld.

12. The Tribunal decided issues No.5 to 7 in favour of the insurer and against the owner and the claimants have not questioned the said findings. Accordingly, the findings returned on these issues are upheld.

Issue No.2

13. The deceased was an Advocate by profession, was 42 years of age at the time of accident, which is not in dispute. Claimants, in order to prove the earnings of the deceased, proved on record the income tax returns Ext.PW-2/A and Ext.PW-2/B. The Tribunal, after evaluating the material on record, has rightly held in paragraph 21 of the impugned award that the gross monthly income of the

deceased was not less than Rs.30,000/-. In view of the law laid down by the Apex Court in **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, which decision was also upheld by the larger Bench of the Apex Court in **Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 3120**, 1/3rd was to be deducted from the monthly income of the deceased. Thus, after making deductions, the Tribunal has rightly held that the dependants lost source of dependency to the tune of Rs.20,000/- per month.

14. The Tribunal has fallen into an error in applying the multiplier '10', whereas keeping in view the age of the deceased i.e. 42 years at the time of accident and having regard to the judgment of the Apex Court in **Sarla Verma's case (supra)** read with the 2nd Schedule attached with the Act, it is held that multiplier of '13' is just and appropriate, and is applied accordingly.

15. Having said so, the claimants are held entitled to Rs.20,000/- x 12 x 13 = Rs.31,20,000/- under the head 'loss of source of dependency'.

16. In addition, the claimants are also held entitled to Rs.10,000/- each, i.e. Rs.40,000/- in all, under the heads

'loss of estate', 'loss of love and affection', 'loss of consortium' and 'funeral expenses'.

17. Thus, the claimants are held entitled to Rs.31,20,000/- + Rs.40,000/- = Rs.31,60,000/-.

18. The Tribunal has also gone astray in not awarding interest. Accordingly, it is held that amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

19. It is also worthwhile to note that the claimants are third party and the insurer has been directed to satisfy the award amount, with right of recovery.

20. In view of the above discussion, there is no merit in the appeal filed by the insurer and the same is disposed of as such. The cross objections filed by the claimants are allowed, the impugned award is modified and amount of compensation is enhanced. The insurer is directed to deposit the entire amount alongwith interest within six weeks and on deposit, the Registry is directed to release the same in favour of the claimants, through their respective bank accounts forthwith. Needless to say that the insurer is at

liberty to lay motion for recovery of the amount before the Tribunal.

21. The appeal as well as cross objections are disposed of accordingly.

October 28, 2016
(Tilak)

(Mansoor Ahmad Mir)
Chief Justice