

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 285 of 2011

Decided on : 06.06.2016

Himachal Road Transport Corporation and another
.....Appellants

Versus

Kamlesh Devi & another
...Respondents

Coram:

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

Whether approved for reporting?

Yes.

For the Appellants : Mr. Jagdish Thakur, Advocate.

For the respondents: Mr. Vivek Thakur, Advocate, for
respondent No. 1.

Nemo for respondent No. 2.

Mansoor Ahmad Mir, Chief Justice (oral)

Challenge in this appeal is to the award dated 31st May, 2011, passed by the Motor Accident Claims Tribunal, (I), Kangra at Dharamshala, H.P. (hereinafter referred to as 'the Tribunal'), in M.A.C. Petition No. 13-N/II-2009, whereby compensation to the tune of ₹3,35,245/- and cost quantified at ₹2,000/-, with interest @ 9% per annum from the date of filing of the claim petition, came to be awarded in favour of the claimant-respondent No. 1

herein and against respondents No. 1 & 2-appellants herein (hereinafter referred to as 'the impugned award').

2. The claimant had invoked the jurisdiction of the Tribunal in terms of Section 166 of the Motor Vehicles Act, 1988, for short 'the Act', for granting compensation to the tune of ₹15,00,000/-, as per the break-ups given in the claim petition.

3. The respondents contested the claim petition on the grounds taken in their memo of objections.

4. Following issues came to be framed by the Tribunal:

- “(1) *Whether the deceased had died due to the rash and negligent driving of vehicle bearing registration No. HO-38-3919 driven by respondent No. 3 as alleged?* ...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 bad for non-joinder of necessary parties?* ...OPR 1 to 3

- 4) *Whether the petitioner has suppressed the material facts from the Tribunal as alleged? If so its effect? ...OPR 1 to 3.*
- 5) *Whether no cause of action accrued to the petitioner as alleged? ...OPR 1 to 3.*
- 6) *Relief."*

5. The claimant has examined seven witnesses. The respondents have examined only one witness, i.e. the driver of the offending vehicle, Baldev Singh.

Issue No. 1.

6. The Tribunal after scanning the evidence, oral as well as documentary, held that the claimant has proved that driver, namely, Baldev Singh, had driven the offending vehicle, at the relevant time, rashly and negligently and caused the accident.

7. I have perused the evidence led by the claimant, which has remained unrebutted. Even, the driver has not been able to defend himself. There is sufficient evidence on the file, which does disclose that the driver was driving the offending vehicle, rashly and negligently, at the

relevant time and caused the accident, in which the deceased lost his life. Accordingly, the findings returned by the Tribunal on Issue No. 1 are upheld.

8. Before I deal with issue No. 2, I deem it proper to deal with issues No. 3 to 5.

Issues No. 3 to 5.

9. It was upon the respondents to prove these issues, have not led any evidence. Accordingly, the Tribunal has rightly decided these issues in favour of the claimant and against the respondents. Accordingly, the findings returned by the Tribunal on the said issues are upheld.

Issue No. 2.

10. Admittedly, the age of the deceased was 19 years at the time of accident. The Tribunal has assessed the monthly income of the deceased as ₹ 3,000/-, cannot be said to be excessive, while keeping in view of the age of the deceased and the fact that the claimant has lost her budding son.

11. Accordingly, I am of the considered view that the Tribunal has rightly assessed the monthly income of the deceased as ₹ 3,000/-, applied the multiplier of '16' and deducted 50% towards his personal expenses.

12. Viewed thus, it is held that the compensation to the tune of ₹ 2,88,000/- awarded by the Tribunal, under the head 'loss of dependency, is adequate and is accordingly upheld.

13. The Tribunal has also rightly awarded compensation under the other heads.

15. Viewed thus, no interference is required. Accordingly, the impugned award is upheld and the appeal is dismissed.

16. The Registry is directed to release the entire amount in favour of the claimant, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing the same in her account.

17. Send down the records after placing a copy of
the judgment on record.

May 6, 2016
(hemlata)

(Mansoor Ahmad Mir),
Chief Justice