IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.501 of 2010.
Reserved on : 26.5.2016
Decided on: 31.05.2016.

Bidya Devi .....Appellant.

Versus

Managing Director, Himachal Road Transport Corporation, Shimla and others ……Respondents.

Coram

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner : Mr. J.R. Poswal, Advocate.

For the respondent No.1 & 2 : Mr. Rohit Bharol, Advocate.

For the respondent No.3 : Mr. Vikas Rajput, Advocate.

Chander Bhusan Barowalia, Judge.

The present appeal is maintained by the appellant/petitioner/claimant (hereinafter referred to as "the petitioner") against the award of Motor Accident Claims Tribunal, Bilaspur, District Bilaspur, dated 1.9.2010, in MAC No.15 of 2008, with a prayer to modify the same and enhance the amount of compensation to ₹20,00,000/-.

2. The brief facts of the case are that deceased Akhil Kumar was son of the petitioner (hereinafter referred to as "the deceased"), he alongwith Sandeep Sharma, after attending the marriage of their cousin at village Battal, Tehsil Arki, District Solan,

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

were waiting for a bus at Shalaghat, at about 7:45 pm, bus bearing No.HP-68-0482 driven by respondent No.3 and owned by Himachal Road Transport Corporation, Shimla and managed by Managing Director, Regional Manager, Himachal Pradesh Transport Corporation, Mandi (hereinafter referred to as "the respondent") came from Shimla and signal was given to stop the bus. Sandeep Sharma got into the bus from front door, whereas the deceased from the rear door. The deceased could not catch hold of the door properly, he fell down, sustained head injury and died on the spot. The deceased was declared dead in C.H.C. Arki, on the same day. As per the petitioner, the deceased was 21 years of age and had successfully completely fourth semester in Mechanical Engineering from Government Polytechnic College, Sundernagar and had also successfully completed basic course of computer and had good future prospects. It is further averred that deceased was an agriculturist and used to earn his livelihood by doing agriculture work. It is further averred that petitioner was solely dependent upon the deceased.

3. Respondents contested the claim petition, but they have not assailed the findings of the learned Tribunal below with regard to the negligent driving of respondent No.3 and respondents are not liable to pay the damages. So, this point needs no consideration.

4. The only question involved in the present appeal is whether the compensation awarded to the petitioner is just and reasoned or the compensation is required to be enhanced.

5. Heard the learned counsel for the parties and also gone through the record of the case carefully.

6. PW-1 Shri Sandeep Sharma, has deposed in the Court that he, alongwith deceased, was returning to their house after attending the marriage at village Batal and were waiting for a bus at Shalaghat and when the bus in question came there from Shimla side they gave signal with their hands to stop the bus, but the bus did not stop completely and driver of the bus slowed down the bus and he got into the bus from the front door, whereas the deceased also tried to get into the bus from the rear door, but since the bus was in motion and as such, the deceased fell down on the road, sustained injuries due to which he died on the spot and he had reported the matter to the police vide FIR Ex.PW1/A. He has specifically stated that accident took place due to rash and negligent driving of the bus by its driver.

7. Such statement of PW-1 is also corroborated by FIR Ex.PW1/A which has been proved by HC Rajinder Singh (PW-2). On perusal of Ex.PW1/A, it is clear that accident took place due to rash and negligent driving of the bus by its driver. However, in cross-examination of PW-1 has admitted that when they gave

signal to the driver to stop the bus, he did not stop the bus, but the bus was slow down by the driver. He has further admitted that they tried to board the moving bus and he succeeded in getting into the bus, whereas the deceased who also tried to get into the bus fell down and sustained injuries. He has also specifically stated that bus did not come to a complete halt and they tried to board the bus while it was still in motion. Such admission having been made by PW-1 in his cross-examination supports the plea of respondent No.3 that the deceased tried to get into the moving bus without waiting for its halt due to which he fell down and sustained injuries resulting into his death. PW-1 has specifically admitted that in case they had not tried to get into the moving bus, the accident would not have taken place. Such admission made by PW-1 in his cross-examination goes to establish that deceased was also negligent, as he tried to get into the moving bus, as a result of which he fell down, sustained injuries and as such, the accident can be safely held to have taken place upto some extent due to negligence of the deceased.

8. At the same point of time, driver of the bus (respondent No.3), who was driving the bus was equally responsible as he could not stop the bus completely to make the petitioner board the bus. Respondent No.3 has deposed that he stopped the bus at Shalaghat in order to facilitate some of the

passengers to alight and board the bus and thereafter conductor blew the whistle, he started the bus and the bus had covered a distance of about 15 feet then one boy entered into the bus from the front door and he asked him to stop the bus and that the deceased neither fell down from the bus nor he sustained injuries due to his negligence. However, in cross- examination (RW-1) has admitted that he is facing a criminal case regarding the accident in the learned Court at Arki and FIR has also been lodged against him. It is also mentioned that no other witness has been examined by respondent No.3 to support his such statement which means that such statement of respondent No.3 remained un-corroborated and in view of the fact that he is facing a criminal case at Arki, regarding the accident in question, it is natural for him to have denied his negligence resulting into the accident at the relevant date and time. In such circumstances, the un-corroborated statement of respondent No.3 on the aforesaid point cannot be relied upon and as such, on the basis of his statement, it cannot be held that accident was the result of sole negligence of the deceased and there was no negligence on his part into the accident.

9. Now coming to the income of the deceased, the deceased was pursuing a profession degree and the learned Tribunal below after taking into consideration that the deceased was student of Mechanical Engineering is expected to earn not less

than ₹10,000/- per month, but this income would definitely have increased with the passage of time because of seniority and experience and to take the income of the deceased at ₹10,000/- per month will not be justified. This Court finds that the income of the deceased was required to be taken at ₹12,000/- per month. Though the petitioner has claimed that the deceased was agriculturist, but there is no proof on the same and so, no income can be taken into consideration, as the petitioner was a regular student of Mechanical Engineering.

10. The 03 units are made out of this income each unit comes to ₹4000/-. 02 units are given to the deceased and thus, the dependency comes to ₹4000/- among. The dependency comes to ₹48,000/-. The deceased was 22 years of age and the petitioner was 52 years of age. The learned Tribunal below has applied multiplier 11 only, but taking into consideration the law as laid down in ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, (2015) 6 Supreme Court Cases 347 :***:

> ***"The remaining question is only on multiplier. The High Court following Santosh Devi, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by another three-Judge Bench decision in Reshma Kumari. It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned,***

there will always be room for dispute as to whether the age of the eldest or youngest or even the average, etc., is to be taken. To quote: (Reshma Kumar case, SCC p.88, para 36)"

"36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in Sarla Verma."

The multiplier of 17 is required to be applied in the present case, as the deceased was only 22 years of age. This way the loss of dependency comes to ₹8,16,000/-. It has come in evidence that the deceased tried to get into the moving bus alongwith his friend Sandeep Sharma (PW-1), but it is also clear on perusal of FIR and the statement of PW-1 that when the petitioner alongwith his friend tried to board the bus in question which was in motion and had not come to a complete halt, then respondent No.3, who was driving the bus, did not stop the bus immediately and he went on driving the bus, as a result of which, the deceased, who was trying to get

into the moving bus, fell down resulting into his death on the spot. Accordingly, the failure of respondent No.3 to immediately stop the bus on seeing that the deceased was trying to get into the bus from the rear door of the bus goes to establish the negligence on the part of respondent No.3 in driving the bus and such act of the respondent No.3 also can be safely held to have resulted into the accident.

11. From the above, it is clear that the accident has resulted due to negligence on the part of driver as well as deceased and it was result of contributory negligence of respondent No.3 and deceased. The findings of learned Tribunal below that the accident has occurred due to contributory negligence of respondent No.3 and deceased was equally negligent alongwith respondent No.3 resulting into the accident leading to the deceased, needs no inference. As the accident has occurred due to contributory negligence on the part of deceased also, the compensation awarded on account of loss and dependency is required to be made 50%. So, the petitioner is held entitled for loss of dependency to the tune of ₹8,16,000/- divided by 2=₹4,08,000/-. The petitioner has claimed that the petitioner has also suffered love and affection, though it is impossible to calculate the loss by way of love and affection due to the loss of her son in terms of money cannot be quantified,

however, the petitioner is required to be given a liquidated amount towards the love and affection and the same is quantified at ₹50,000/-. The petitioner is also held entitled for funeral expenses which are quantified at ₹10,000/-, which the learned Tribunal below has already allowed and no interference is required to this extent. This way the petitioner is held entitled for the compensation to the tune of ₹4,68,000/-. As far as the interest is concerned, no interference is required i.e. interest at the rate of 7.5% per annum as awarded by the learned Tribunal below. This amount of compensation ₹4,68,000/- (rupees four lac sixty eight thousand only) alongwith 7.5% interest from the date of filing of the petition in the learned Tribunal below till the amount is deposited is awarded in favour of the petitioner. Respondents No.1 and 2 being the owner of the vehicle in question are held liable to make the payment of amount. This amount is inclusive of the compensation, if any, awarded under Section 140 of the Motor Vehicles Act, by the learned Tribunal below.

12. In the peculiar facts and circumstances of the case, no orders as to costs. The appeal is accordingly disposed of alongwith pending application (s), if any.

(Chander Bhusan Barowalia),
Judge

31st **May, 2016**
(CS)