

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**FAO No. 286 of 2016****Reserved on : 20.4.2024****Decided on : 30.4.2024**

Shriram General Insurance Co. Ltd.**...Appellant****Versus****Kanta & ors****...Respondents**

Coram**Hon'ble Mr. Justice Virender Singh, Judge**Whether approved for reporting?

**For the Appellant: Mr. Ashwani Kaundal,
Advocate.****For the Respondents :Mr. Naveen K. Bhardwaj,
Advocate, for respondents
No. 1 to 4.****Dr. Lalit K. Sharma,
Advocate, for respondents
No. 5 and 6.**

Virender Singh, Judge

Aggrieved from the award, dated 24.10.2014,
passed by the Court of learned Motor Accident Claims
Tribunal-II, Kullu, District Kullu, H.P. (hereinafter
referred to as 'the Tribunal'), the appellant has

preferred the present appeal, under Section 173 of the Motor Vehicles Act (hereinafter referred to as 'the M.V. Act'), as the ultimate liability to pay the amount of compensation alongwith interest has been fastened upon it.

2. Vide award impugned herein, the learned Tribunal has partly allowed Claim Petition No. 29 of 2014 (2012), titled as, 'Smt. Kanta and others versus Nimat Ram & ors', and awarded a sum of Rs. 21,40,780/-, alongwith interest @ 9% per annum, to the petitioners, from the date of filing of petition, till deposit of the awarded amount.

3. Parties to the lis, hereinafter, are, referred to, in the same manner, in which, they were referred to, by the learned Tribunal.

4. Brief facts, leading to filing of the present appeal, before this Court, may be summed up as under:

Petitioners being widow, daughter and parents of deceased Bhim Sen, have filed the Claim Petition, under Section 166 of the M.V. Act, seeking

compensation, on account of death of Bhim Sen, in a roadside accident, on 30.8.2012, involving vehicle No. HP-58-5671 (hereinafter referred to as 'the offending vehicle'), against the respondents, being owner, driver and Insurer of the offending vehicle.

4.1 According to the petitioners, on 30.8.2012, at about 10:00 a.m., deceased Bhim Sen, alongwith one Laxman, was going towards Manali from Baltah, on the Scooter No. HP-58-0696. When, they reached near village Sarsai, then, the offending vehicle, being driven by respondent No. 2, in rash and negligent manner, came there from Manali side, and hit Scooter No. HP-58-0696. Consequently, both the riders fell down.

4.2 The deceased, as well as, the pillion rider of the scooter sustained injuries and Bhim Sen died on the spot. Information regarding the accident was given to Police Station, Manali. Age of deceased Bhim Sen, at the relevant time, has been pleaded to be 28 years. According to the petitioners, he was working with Abhir Infrastructure Private Limited, as Helper. His

salary has been pleaded to be Rs. 10,000/- per month, at the relevant time.

4.3 Since, the accident in question has been attributed to the rash and negligent driving of respondent No. 2, as such, petitioners have sought compensation of Rs. 20,00,000/- from the respondents.

5. When, put to notice, the claim petition was contested by the respondents.

6. Respondents No. 1 and 2 had filed the joint reply, by taking preliminary objections that the accident in question had not taken place, due to rash and negligent driving of respondent No. 2, nor the Scooter was hit by the offending vehicle. However, according to them, the accident had taken place due to the fact that left leg of the pillion rider (deceased) struck against the offending vehicle, on the left side of the road, due to which, the Scooterist lost his balance and fell down on the road and sustained injuries. Consequently, Bhim Sen expired. The petition is also stated to be bad for mis-joinder of the necessary

parties; the petitioners are denied to be the legal heirs of deceased; and the petitioners are stated to have not approached the Court with clean hands.

6. 1 On merits, contents of the claim petition have been denied. However, contents of para-10 of the claim petition have been contested, mainly on the ground that petitioners have not mentioned the FIR in the petition, for the reasons that the FIR in question was registered in this case, after about three months, from the date of accident, and the same is also stated to be recorded on the basis of false and concocted facts. The factum of accident with offending vehicle has also been disputed by them.

7. Respondent No. 3-Insurance Company has filed its separate reply by taking preliminary objections that driver of the offending vehicle was not possessing valid and effective driving license to drive the offending vehicle; the vehicle in question was being permitted to ply in violation of the Insurance Policy, as well as, the provisions of M.V. Act; petitioners have not approached the Court with clean hands; the claim

petition has been filed by the petitioners, in connivance with respondents No. 1 and 2; petition is bad for non-joinder of necessary parties. On merits, contents of the petition have been denied, for want of knowledge.

8. The petitioners have filed rejoinder to the reply, filed by respondents No. 1 and 2, by denying the preliminary objections, as well as, contents of the reply, by virtue of which, the claim petition has been contested.

9. From the pleadings of the parties, the learned Tribunal has framed the following issues, vide order dated 27.8.2012:

- 1. Whether Bhim Sen predecessor of the petitioners, pillion rider of Scooter No. HP- 58 0698 having been driven by one Laxman died in a motor vehicular accident when the aforesaid Scooter was knocked down by truck No. HP-58 5671 having been driven by respondent No. 2 rashly and negligently, as alleged? OPP.*
- 2. Whether the petitioners being dependents of deceased are entitled for compensation as prayed for? If so, from whom? OPP.*
- 3. Whether the accident occurred due to the negligence of deceased pillion rider when his leg dashed against*

the stationary truck and the Scooterist lost control over the Scooter as a result of which accident took place, as alleged? OPR-1 and 2.

4. Whether the respondent No. 2 was not driving the aforesaid offending truck without having valid driving licence, as alleged? OPR-3.

5. Whether the offended truck was being driven by respondent No. 2, owned by respondent No. 1 in violation of terms of insurance policy, as alleged? OPR-3.

6. Whether the petition of the petitioners is not maintainable in the present form, as alleged? OPR

7. Whether the petition is bad for non-joinder of necessary parties, as alleged? OPR

8. Relief.

10. Thereafter, parties, to the lis, were directed to adduce evidence. After closure of the evidence and after hearing learned counsel for the parties, the learned Tribunal has allowed the petition, as referred above.

11. Feeling aggrieved from the said award, the present appeal has been preferred by the Insurance Company, before this Court, challenging the award passed by the learned Tribunal, mainly on the ground that the award passed by the learned Tribunal is

against law and facts, as wrong conclusion, with regard to income of the deceased, has been drawn.

12. Highlighting the version of petitioner No. 1 that deceased was working as Helper with Abhir Infrastructure Pvt. Ltd., it is the case of the appellant-Insurance Company that there is no evidence has been led, in this regard. Salary slips Mark-A to Mark-D have not been proved, in accordance with law. As such, according to the appellant-Insurance Company-appellant, the same cannot be taken into consideration.

13. Another ground of attack is that the salary of the deceased is proved to be Rs. 4300/- per month, but, the said fact has not been considered by the learned Tribunal and the findings given by the learned Tribunal have been assailed on the ground that without any documentary evidence, learned Tribunal has wrongly held the age of Bhim Sen, at the time of death, as 28 years. The evidence of RW-1, qua the accident is stated to have not been considered. The

FIR is also stated to be lodged by the petitioners, after a gap of 15 days.

14. According to the appellant-Insurance Company, the evidence of PW-2 Surat Ram has wrongly been relied upon by the learned Tribunal, as the same has not been supported by any other witness.

15. The findings of the learned Tribunal have been assailed on the ground that the driver of the Scooter has not been made party, as he was the actual cause of the accident. The parents of the deceased have wrongly been held to be the dependents on the income of the deceased.

16. The findings of the learned Tribunal have further been assailed on the ground that neither the number of the vehicle has been mentioned nor the Police has registered any criminal case, under Section 279 of the IPC, against respondent No. 2. Even post-mortem examination of the deceased is stated to have been not conducted.

17. On the basis of above facts, a prayer has been made to allow the appeal.

18. Alongwith the appeal, the Insurance Company has filed the application under Order 41 Rule 27 CPC, for proving/placing on record, the copy of report under Section 173(2) Cr. P.C. The said application has been moved on the ground that the document sought to be proved/produced, through this application, is necessary and essential for the just decision of the case.

19. This application has been contested by denying/controverting the contents of the same by the petitioners.

20. By way of present application, filed under Order 41 Rule 27 CPC, a prayer has been made to place on record the copy of report under Section 173(2) Cr. P.C. This document is a photostat copy of the attested copy of the report under Section 173 (2) Cr. P.C., by virtue of which, recommendation has been made to accept the untraced report.

21. The perusal of the record shows that the petitioner has examined Surat Ram, as independent witness, who has categorically stated that on 30.8.2012 he had gone to Sarsai and at about 10:00 a.m. when, he was waiting for the bus, then, he noticed the offending vehicle, driven by its driver, at a very high speed and negligently and the said vehicle hit Scooter No. HP-58-0696. Consequently, both the driver and pillion rider fell down on the road and Bhim Sen sustained injuries, due to which, he expired. This witness has stated that he had gone to Sarsai village on 29.8.2012 and returned from the said village on 30.8.2012. The persons present there, helped the injured and informed the Police. The Police has reached at the spot, in the presence of this witness. Interestingly, the learned counsel appearing for the Insurance Company has not cross-examined this witness. The FIR has been lodged by the petitioners on 14.9.2012, whereas, the accident had taken place on 30.8.2012.

22. Petitioner No. 1 Smt. Kanta Devi appeared in the witness box as PW-1 and filed her affidavit, in examination-in-chief, in which, she has asserted the facts, upon which, she has filed the petition. However, she has admitted the fact that she was not present at the spot, as such, whatsoever has been deposed by her, about the accident in question, is not liable to be taken into consideration.

23. PW-2 is Surat Ram, who has specifically deposed regarding the manner, in which, the accident in question had taken place. When, this witness, who has filed his affidavit in his examination-in-chief, has not been cross-examined by the learned counsel for the Insurance Company, then, the document, which is sought to be produced/proved, by the Insurance Company, is too short for being taken as necessary evidence, for the just adjudication of the case.

24. The untraced report was submitted by the Incharge, Police Station, Manali, on 15.10.2012, when, the lis was pending before the learned Tribunal. The learned counsel appearing for the Insurance Company

could not satisfy the judicial conscience of this Court, as to how the document, i.e. copy of untraced report, is relevant, for the just adjudication of the case.

25. The proceedings, under the M.V. Act are summary in nature, where the liability of tortfeasor is to be fixed on the basis of preponderance of probabilities. When, PW-2 Surat Ram has deposed, on oath, with regard to the manner, in which the accident had taken place, and his deposition has not been controverted by the Insurance Company, then, said deposition about the factual position is deemed to have been admitted by the Insurance Company.

26. The factual position, which has been asserted by a witness, on oath, if not controverted, amounts to admission, on the part of party, who has not controverted the same.

27. Interestingly, in this case, the Insurance Company has not led any evidence, before the learned Tribunal, despite the opportunity being granted to do so.

28. As such, the application does not fulfill the conditions of Order 41 Rule 27 CPC, hence, the same is dismissed.

29. So far as the arguments of learned counsel for the Insurance Company that the FIR has been lodged after 15 days from the date of accident, are concerned, the husband of the petitioner has expired and it cannot be expected from the widow of the deceased to rush to the Police Station, for lodging the FIR, as she had lost her life partner. Different persons act differently, in different situations.

30. The petitioners, after the death of Bhim Sen, might be under trauma and it cannot be expected from them to rush to the Police Station and lodge the FIR. The Registration of the FIR is also not sine-quo non, for seeking the compensation.

31. Admittedly, the post mortem examination has not been conducted, however, learned Counsel for the Insurance Company could not point out any statutory provisions, according to which, post mortem examination is necessary, for seeking compensation,

on account of death of person, in roadside accident. As stated above, statement of PW-2, on oath, is sufficient to hold that accident had taken place due to rash and negligent driving of respondent No. 2, while driving the offending vehicle, in which, Bhim Sen sustained injuries and expired.

32. The tone and tenor of the stand taken by the respondents, in this case, is that the factum of accident has not been denied. However, they have made an attempt to plead that the accident in question had taken place, due to negligence of the Scooterist, who was driving Scooter No. HP-58-0696.

33. The sole statement of respondent No. 2 Naresh Kumar, while appearing in witness box, as RW-1, is too short to hold that the accident in question had taken place, in the manner, as deposed by this witness, as the petitioners have probabalized their case, by examining PW-2 Surat Ram, who has no axe to grind, against the respondents.

34. Even otherwise, the award passed by the learned Tribunal has not been assailed by respondents

No. 1 and 2, nor they have filed any cross-objections, in this case.

35. So far as the quantum of compensation is concerned, the learned Tribunal has rightly taken the income of deceased as Rs. 10,000/- per month, as a specific stand has been taken by the petitioners regarding the fact that deceased was working, as Helper, in Abhir Infrastructure Pvt. Ltd. Similar stand has been taken by petitioner No. 1, when, she appeared in the witness box, as PW-1.

36. With these observations, the present appeal is dismissed, by upholding the impugned award, dated 24.10.2014, passed by the learned Tribunal in Claim Petition No. 29 of 2014 (2012), titled as, 'Kanta & ors Versus Nimat Ram and others.

37. No other point has been urged or argued.

38. The pending application(s), if any, are also disposed of.

39. Record be sent down.

(Virender Singh)
Judge

April 30, 2024
(Kalpana)

