



**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

FAO (MV) No.37 of 2021

Date of Decision: 05.05.2026

Shisham Devi

...Appellant

Versus

Bishan Singh & Ors.

....Respondents

Coram:

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting? Yes.

For the Appellant : Mr. Deepak Bhasin, Senior Advocate, with Mr. Sambhav Bhasin, Advocate.

For the Respondents : Ms. Neha Negi, Advocate, vice Mr. Harish Chand Sharma, Advocate, for respondents No.1 and 2

Mr. Virender Sharma, Advocate, for respondent No.3.

Virender Singh, Judge (Oral):

Appellant-Shisham Devi, dissatisfied with the award dated 07.08.2019, passed by the Court of learned Motor Accident Claims Tribunal-IV, Shimla, Camp at Rohru, District Shimla, H.P., (hereinafter referred to as the 'learned Tribunal'), in MAC Petition No.2-R/2 of 2016, titled as Shisham Devi versus Bishan Singh and others,



has filed the instant appeal under Section 173 of the Motor Vehicles Act (hereinafter referred to as the M.V. Act).

2. By virtue of award dated 07.08.2019, the learned Tribunal has allowed the claim petition, filed by the appellant, under Section 166 of the of the M.V. Act, by awarding a sum of Rs.1,19,200/- along with interest @ 9% per annum, from the date of filing of the petition, till payment. However, 50% amount, out of the amount of compensation, has been slashed down by the learned Tribunal, on account of contributory negligence, which has been attributed to the claimant herself.

3. For the sake of convenience, the parties to the present lis, are hereinafter referred to, in the same manner, as were, referred to, by the learned Tribunal.

4. Brief facts, leading to the filing of the present petition, before this Court, as borne out from the record may be summed up, as under:-

4.1. Claimant-Shisham Devi, who has pleaded her age at the relevant time, as 50 years, has filed the petition, seeking compensation, on account of the injuries suffered by her, in a road side accident, involving vehicle No. HP-



070C-2057 (hereinafter referred to as 'the offending vehicle'), owned by respondent No.1, being driven by respondent No.2 and insured with respondent No.3.

4.2. According to the claimant, the accident in question had taken place on 13.01.2016 at Chhaila, Tehsil Theog, District Shimla, involving the offending vehicle, which, according to her, had taken place due to rash and negligent driving of respondent No.2, while driving the offending vehicle. The information regarding the accident was given to the police of Police Station Theog.

4.3. It is the further case of the claimant that after the accident, she was initially taken to PHC Chhaila, from where, she was shifted to a private Nursing Home at Theog. Thereafter, she returned back to Rohru, where, she remained under treatment from 16.01.2016 to 19.01.2016 with Civil Hospital, Rohru. Thereafter, she was referred to IGMC Shimla, where, according to her stand, as taken in the claim petition, she is still under treatment.

4.4. Since the accident in question has solely been attributed to the rash and negligent driving of respondent No.2, as such, the claimant has sought the amount of



Rs.10,00,000/-, as compensation, along with the statutory interest from the respondents, being owner, driver and insurer of the offending vehicle.

5. When put to notice, the claim petition has been contested by the respondents. Respondent No.1-Owner, in his separate reply, has taken a stand that the accident in question had not taken place, due to rash and negligent driving of respondent No.2, rather, the same is attributed to the claimant herself.

6. Respondent No.3-Insurance Company of the offending vehicle filed its reply by taking the preliminary objections, that the petition is not maintainable; the claimant has no cause of action whatsoever to file the claim petition, against the Insurance Company; the claimant has not approached the learned Tribunal, with clean hands, as well as, concealed the true material facts; and that the claim petition is stated to have been filed by the claimant, in collusion with respondents No.1 and 2. The contents of the claim petition have mainly been denied for want of knowledge.



7. Thus, the respondents have prayed for the dismissal of the claim petition.

8. From the pleadings of the parties, the following issues were framed by the learned Tribunal, vide order dated 06.09.2017:-

(1) Whether injured Shisham Devi had sustained grievous injuries in motor vehicle accident on account of rash and negligent driving of driver of the vehicle bearing No.HP-07C-2057 being driven by respondent No.2, on 13.01.2016 at place Chhaila, Tehsil Theog, as alleged? OPP.

(2) Whether the petitioner is entitled for grant of compensation, if, so then what should be the quantum of compensation and from whom? OPP.

(3) Whether the petition is not maintainable in the present form as alleged ? OPD.

(4) Whether the petitioner has no cause of action to file the present petition, as alleged? OPD.

(5) Whether vehicle was being driven by the driver in violation of terms and conditions of insurance policy and in contravention of provision of Motor Vehicle Act, as alleged? OPD.

(6) Whether the claim petition has been filed by the petitioner in collusion with respondents No.1 and 2? OPD.



(7) Whether the petition filed by the petitioner is bad for non-joinder of necessary parties, as alleged? OPD.

(8) Relief.

9. Thereafter the parties to the lis were directed to adduce evidence. After closure of the evidence, the learned Tribunal has decided the claim petition, by awarding the relief, as referred to above.

10. Feeling dissatisfied with the award, as well as, feeling aggrieved from the decision of the learned Tribunal, by virtue of which, 50% amount of compensation has been slashed down, on account of contributory negligence, the present appeal has been filed by the claimant before this Court.

11. The award has been assailed, on the ground that the learned Tribunal has wrongly held the claimant responsible for contributory negligence to the extent of 50% and as such, the amount of compensation has wrongly been slashed down.

12. The award has also assailed, on the ground that the findings of the learned Tribunal, on issues No.1 and 2 are based upon assumptions, presumptions,



surmises and conjectures. The findings qua negligence on the part of the claimant, are also stated to be unjust and unreasonable. In addition to this, the quantum of the awarded amount has also been sought to be enhanced, on the ground, that the claimant has proved on record that she has suffered functional disability by fracture of her leg and head injury.

13. Apart from this, award has also been assailed on the ground that the learned Tribunal has not considered the fact that due to the injuries suffered by her, which are permanent in nature, the claimant/appellant would not be in a position to work efficiently and the same would make a reduction in her working capacity.

14. On the basis of the above facts, Mr. Deepak Bhasin, Senior Advocate, assisted by Mr. Sambhav Bhasin Advocate, appearing for the appellant (claimant) has prayed that the the appeal may kindly be allowed, by setting aside the findings, by virtue of which, the claimant-appellant has been held to be contributory negligent, in the accident in question, resulting into slashing down of the awarded amount to the extent of 50%.



15. In addition to this, a prayer has also been made that the amount awarded by the learned Tribunal, does not satisfy the legislative intent to grant 'just compensation'. As such, a prayer has been made to allow the appeal, as prayed for.

16. Per contra, Mr. Virender Sharma, Advocate, appearing for respondent No.3-Insurance Company, vehemently opposed the prayer, so made in the appeal, on the ground that from the evidence, so adduced, by the parties before the learned Tribunal, the learned Tribunal has rightly burdened the claimant with contributory negligence and rightly slashed down the amount of compensation, to the extent of 50%, on account of the contributory negligence for the claimant.

17. In order to decide the rival contentions, it is appropriate for this Court to discuss the evidence, so adduced, before the learned Tribunal.

18. PW-1, C. Naveen Kumar No.796, Police Post Chhaila, Police Station Theog, who has proved Rapat No.5, dated 13.01.2016, the same is Ex.PW-1/A. This witness has admitted that in the said accident, there is no



negligence on the part of the driver and the rapat has been entered, as per the information provide by the informant. However, in the cross examination, by learned counsel appearing for respondent No.3, this witness has admitted that Rapat No.5, was not entered by him, as such, he is not in a position to say that due to whose negligence, the accident in question had taken place.

19. Claimant-Shisham Devi, appeared in the witness box, as PW-2 and deposed that on 13.01.2016, she was coming back from Shimla to Rohru. On the way at Chhaila, she had alightened down from the vehicle in order to have meal. After having the meal, she was standing on the side of the road, in the meanwhile, all of a sudden, from Shimla side, one Alto Car bearing registration No.HP-07C-2057, (offending vehicle), being driven by its driver, in a fast speed came there and the offending vehicle hit her, due to which, she suffered injuries. She has further deposed that the accident in question had taken place due to the fast speed and negligence of the driver. Thereafter, she was taken to PHC Chhaila, from where, she was taken to a private Nursing



Home at Theog. Subsequently, she came to Rohru for her treatment w.e.f. 16.01.2016 to 19.01.2016 from where, she was further referred to IGMC Shimla.

20. According to the claimant, in the said accident, she suffered injuries over her head and also sustained fracture of her leg. CT scan was also done. According to her, during her treatment, serious injuries were found on her head. On 07.12.2017, when, she appeared in the witness box, she has deposed that she is still under treatment. Not only this, she has also deposed that she had undergone surgery at IGMC, Shimla. Regarding the said accident report was made by Police Post Chhaila (sic Police Station) where, respondents were also present there. The respondents had connived with the police. She is not aware about the contents of the report nor, the same was read over to her. She was working on fixed salary with Electricity Board, from where, she was earning Rs.4,000/- per month. She has further deposed that apart from this, during vacation period, she used to earn Rs.2,000/-, as such, she has deposed that her monthly income was



Rs.6,000/-. After the accident, she has been fired from the job and now, she is unable to do any work.

21. According to her, she has spent Rs.1,50,000/- to 2,00,000/- on her treatment. She has placed on record copy of prescription slip Mark F, CT scan report Mark A, Discharge slips Mark B & C, as well as, other documents as Mark L-1 to Mark L-17.

22. She was cross-examined by learned counsel appearing for respondents No.1 and 2, wherein she has deposed that the report Ex.PW-1/A was lodged with Police Post Chhaila, number of persons were present in the market at that time. However, she has denied the suggestions that the driver of the offending vehicle was neither rash, nor, negligent and she herself moved towards the offending vehicle without care and caution and had struck against the Alto car.

23. She has further deposed that she has no documentary proof with regard to her employment with a Contractor of Electricity Board. She has also denied the fact that she was not earning Rs.6,000/- per month. In cross examination, by learned counsel appearing for



respondent No.3, although a number of questions have been put to the claimant, but nothing could be elicited from her.

24. PW-3, Saligram, Junior Assistant, Civil Hospital Rohru, deposed that the prescription slip, dated 13.01.2016, admission chart dated 14.01.2016, are correct, as per their record. He has proved the same as Ex.PW3/A. According to this witness, the claimant was admitted in Civil Hospital Rohru on 14.01.2016 and was discharged on 16.01.2016, and referred to IGMC Shimla.

25. PW-4, Geeta Ram, has deposed that about three years ago, he was coming back from Shimla to Rohru along with his wife. When, they were standing at Chhaila, then, one vehicle came from Shimla and hit Shisham Devi, who sustained serious injuries. Thereafter, she was taken to PHC Chhaila, from where, she was taken to private Nursing Home at Theog.

26. According to him, the accident in question had taken place, due to rash and negligent driving of driver of the offending vehicle. This witness, in cross examination, has specifically denied that in Police Post Chhaila,



Shisham Devi voluntarily got recorded that due to her own negligence, she has struck against the vehicle and as such, she has prayed that no action be taken.

27. To rebut this evidence, led by the claimant, respondent No.1 Bishan Singh, owner of the offending vehicle deposed that the vehicle was insured with respondent No.3 and the same was driven on 13.01.2016, by respondent No.2. They were on the way from Shimla to Rohru. On 13.01.2016, due to her own negligence, the claimant struck against the offending vehicle, thereafter, they took her to PHC Chhaila, where, she has made a statement to the police that the accident in question had taken place, due to her negligence. In this regard Rapat Ex.PW1/A was recorded. Lastly, he has stated that they are not liable to pay any compensation.

28. Respondent No.2, Narinder, driver of the offending vehicle is the son of respondent No.1. He was having driving license, which is Ex.RW1/C. He has denied that he was not present in the vehicle. They were on the way to their home from Shimla to Rohru. The treatment of claimant from 16.01.2016 to 19.01.2016 has been denied



by this witness. He has further deposed that on 13.01.2016, he was driving the offending vehicle and was having valid and effective license, copy of which, has been proved by him as Ex.RW-1/C.

29. According to respondent No.2, when, they reached at Chhaila, then, claimant, due to her negligence, struck against the vehicle; thereafter, she was taken to PHC Chhaila, where, her statement was recorded. Lastly, he has deposed that the accident in question had taken place due to negligence of the claimant.

30. In cross examination, by learned counsel appearing for the claimant this witness has deposed that a number of persons were present at Chhaila market. Claimant was not known to him. He has denied that on 13.01.2016, he was driving the vehicle in a fast speed at Chhaila market and hit the claimant, who was standing on the side of the road. He has also admitted that he took the claimant to PHC Chhaila. Thereafter, he took her to a private Nursing Home at Theog, where, treatment was given to her. He has also admitted that from 16.01.2016 to 19.01.2026 the claimant remained admit at Civil



Hospital, Rohru, from where, she was referred to IGMC Shimla, where, CT scan was done and she has undergone brain surgery. However, the amount of expenditure has been denied by him.

31. In cross examination, by learned counsel appearing for respondent No.3- Insurance Company, this witness has deposed that the offending vehicle was impounded by Bishan Singh. He has again reiterated that the accident in question had taken place due to negligence of the claimant.

32. RW-3 C, Inder Singh Police Post Chhaila, proved the copy of Rapat, as Ex. PW-1/A.

33. The claimant has filed the petition under the provisions of M.V. Act. It is no longer res-integra that the provisions of M.V. Act are beneficial piece of legislation and the endeavour of the Court/Tribunal should be to provide 'just compensation' to the claimants. 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 and strict rules of evidence are not applicable.



34. Being guided by the above settled proposition of law, now, this Court would proceed further to ascertain the fact, whether, the respondents including Insurance Company have successfully proved, in this case, that the accident in question had taken place due to the negligence of the claimant herself.

35. Factum of accident has not been disputed, in this case. There are two versions, which are coming forward, one by the claimant, who has inculpated respondent No.2, being rash and negligent, while driving the offending vehicle, whereas, the respondents including the driver and owner, have made efforts to exonerate themselves from the allegations of rash and negligent driving by proving, on the basis of the statement allegedly made by the claimant to the police of Police Post Chhaila, that the accident in question had taken place due to the contributory negligence of the claimant herself.

36. Admittedly, the statement, which has been made by the claimant to the police at Police Post Chhaila, has been heavily relied upon by the respondents, as the said document i.e. Rapat Roznamcha dated 13.01.2016



has firstly been proved by the claimant, by examining PW-1 Naveen Kumar and thereafter, by the Insurance Company examining RW-3 HC Inder Singh. Neither PW-1 has been proved to be the scribe of the said document, nor, RW-3 has stated that he has entered the Rapat Rojnamcha, the said statement was not made on oath, before the police.

37. Admittedly, the claimant has suffered injuries in the accident in question and she was under trauma, when, taken to PHC Chhaila, where, police had recorded her version, on the basis of which, the respondents had exonerated respondent No.2, (driver of the offending vehicle), from the allegation of rash and negligent driving. However, when, the claimant herself appeared in the witness box as PW-2, she has not only stated about the rash and negligent driving by respondent No.2, but, also withstood the lengthy cross examination.

38. By examining PW-4 Geeta Ram, who was also traveling with her in the bus, the claimant has proved the fact that the accident in question had taken place due to the rash and negligent driving of respondent No.2.



39. Although, a futile attempt has also been made by respondents No.1 and 2, by heavily relying upon the statement made by the claimant to the police, with regard to the fact that the accident in question had not taken place due to rash and negligent driving of respondent No.2, but, according to them, the same had taken place due to the negligence of the claimant herself. Even, according to statement of RW-2 Narinder Singh, driver of the offending vehicle, at the time of accident, a number of persons were present in Chhaila market. He has not bothered to examine any of the independent witnesses to corroborate his version, with regard to the alleged negligence of the claimant. The offending vehicle was in the exclusive control of respondent No.2, at the relevant time and while, crossing from a populated place i.e. Chhaila market, it was expected from him to drive the vehicle, in such a manner, so that no untoward incident could take place. However, his evidence is totally silent about this material fact that in the Chhaila market, he was driving the vehicle, in a proper speed and with extra care and caution.



40. Considering the low legal literacy of Indian masses, this Court is of the view that the claimant, in the present case, has successfully proved the fact that the accident in question had taken place, due to the rash and negligent driving of respondent No.2, while driving the offending vehicle, as such, the learned Tribunal has fallen into an error by slashing down the amount of compensation to 50%, on account of alleged contributory negligence of the claimant.

41. So far as the case law, relied upon by learned Counsel appearing for respondent No.3, in case titled as ***Oriental Insurance Company Limited versus Meena Variyal and others reported in 2007(5) SCC 428***, is concerned, with due respect, to the law laid down by the Hon'ble Supreme Court, the same is not applicable, in the facts and circumstances of the present case, in view of the discussion, made hereinabove.

42. In this case, the claimant has also sought the enhancement of the compensation, which has been awarded to her. In order to grant 'just compensation' to the claimant, her entitlement is required to be assessed



independently, under various heads, on the basis of evidence, so adduced.

NON PECUNIARY DAMAGES:

1. PAIN AND SUFFERINGS:

43. As per the stand of the claimant, the period of hospitalization is three days and as per deposition made on oath, she was thereafter, taken to IGMC, Shimla, for further treatment, where her CT Scan was done and surgery was also conducted upon her. However, the claimant has not bothered to place on record the documents, with regard to the above facts, but, on account of non-production of the above material documents, it cannot be said that she was not taken to IGMC, Shimla, for further treatment.

44. Although, from the deposition, it has not been proved as to whether, the claimant remained as indoor patient in IGMC, Shimla or not, however, it is proved on the basis of the evidence, as discussed above that she remained under treatment for about four months, including the period of convalescence. Meaning thereby the period of hospitalization, as per the record of the Civil



Hospital, Rohru is proved to be three days and she might have hospitalized for two-three days in Shimla. Thus, the total period of hospitalization comes to about six days. The said period of hospitalization must be painful, for which, she is held entitled for a sum of Rs.2000/-x 6= Rs.12,000/-

2. LOSS OF ENJOYMENT OF LIFE:-

45. The age of the claimant has been pleaded, as 50 years and her period of hospitalization has been held to be six days. Also she might have taken about four months for convalescence. Although, it has been stated that the claimant become disabled, due to the injuries suffered in the accident, but, in the absence of any documentary proof with regard to the disability on the person of the claimant, her statement cannot be taken as gospel truth. Thus, considering the period of hospitalization and convalescence, this Court is of the view that during that period, she could not enjoy the life of normal person and for the said period, she has been held entitled for a sum of Rs.50,000/-



3. SHORTEN EXPECTANCY OF LIFE:

46. There is nothing on the record to demonstrate that due to the injuries suffered by her, normal life span of the claimant has been shortened, as such, no amount of compensation is awarded to her, under the above head.

PECUNIARY DAMAGES:

1. LOSS OF EARNINGS AND EARNING CAPACITY:

47. As stated above, in the present case, there is no disability, nor, the evidence of the claimant, qua the fact that after the accident, she could not do normal routine work, this Court is of the view that there is no loss of earning capacity.

48. So far as the loss of income is concerned, as per the case setup by the claimant, she at the relevant time, was working with a contractor of Electricity Department and after the accident, her services were terminated by the contractor. While working with the contractor, the monthly income of the claimant has been placed to be Rs.4,000/- per month.

49. Considering the period of hospitalization of 6 days, as well as, period of convalescence, which is held to



be 4 months, the claimant could not attribute to her family for a period of 5 months, for that the claimant is held entitled for a sum of Rs.4000/-x 5 months= Rs.20,000/-, under the head 'loss of income'

2. MEDICAL EXPENSES:

50. Although, the documents annexed with the claim petition have simply been marked and have not been proved, by summoning any doctor or the person, who had issued the cash memos, however, considering the period of hospitalization, after being referred from Civil Hospital Rohru, she remained under treatment in IGMC, Shimla, she is entitled for the amount of the above bills, which have been marked L1 to L17, total of which comes to Rs.9228/-

3. SPECIAL DIET AND ATTENDANT CHARGES:

51. The period of hospitalization and convalescence, has been held to be 126 days. During that period, she might have taken special diet and also required the services of an attendant, even, on pro-bono basis, for which, she is entitled for a sum of Rs.300x126= Rs.25,200/-.



4. TRANSPORTATION CHARGES:

52. The claimant, after the accident, was firstly, taken to PHC Chhaila, thereafter, to a private Nursing Home at Theog and as admitted by the driver of the vehicle, she thereafter, remained admitted in Civil Hospital Rohru from where, she was referred to IGMC Shimla. Considering the said fact, she might have spent Rs.10,000/- for transportation charges, for which, she is held entitled for a sum of Rs.10,000/-, under this head.

53. However, the rate of interest, which has been awarded by the learned Tribunal, at the rate of 9% is liable to be interfered with and reduced from 9% to 7.5% per annum. Ordered accordingly.

54. Considering all these facts, the petitioner is held entitled to a sum of Rs.12,000/-+Rs. 50,000/- + Rs.20,000/- + Rs.9228/- + Rs.25,200/- + Rs.10,000/- = Total Rs.1,26,428/- along with interest @ 7.5% per annum from the date of filing of the petition, till its realization from respondent No.3.



55. In view of the above discussions, the appeal is disposed of and the award passed by the learned Tribunal is modified and the amount of compensation is enhanced from Rs.1,19,200/- to Rs.1,26,428/- along with interest @ 7.5% per annum, from the date of filing of the petition, till the realization of the whole amount.

56 However, keeping in view the facts and circumstances, there shall be no order so as to costs.

57. Pending application(s) if any, are also disposed of.

58. Record be sent back.

(Virender Singh)
Judge

May 05, 2026
(subhash)