



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MVA) No. 169 of 2013

Reserved on: 12.7.2023

Decided on : 29.8.2023

Dilbag Singh

...Appellant

Versus

Vipan Kumar & others

...Respondents

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting? yes

For the Appellant: Mr. Arun Kaushal, Advocate.

**For the Respondents :Mr. Sanjeev Kumar Suri,
Advocate, for respondents
No. 1 and 2.**

**Mr. S.D. Gill, Advocate, for
respondent No. 3.**

Virender Singh, Judge

The appellant has filed the present appeal, under Section 173 of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the M.V. Act'), against the

award dated 5.12.2012, passed by the learned Motor Accidents Claims Tribunal (Fast Track Court), Una, (hereinafter referred to as 'the Tribunal'), in MAC Petition No. 03/2008, titled as, 'Dilbag Singh Versus Vipin Kumar & others'.

2. Vide award dated 5.12.2012, the learned Tribunal has partly allowed the petition, filed by the appellant, under Section 163-A of the M.V. Act and granted compensation of Rs. 15,000/-, alongwith interest @ Rs. 6 % per annum, from the date of filing the petition, till realization of the entire amount. The ultimate liability to pay the compensation has been saddled on respondent No. 3.

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 the present case, may be summed up as under:

Petitioner Dilbag Singh has filed the petition under Section 163-A of the M.V. Act, seeking

compensation on account of death of his wife Tripta Devi in a motor vehicular accident, involving vehicle No. HP 19A-5184 (hereinafter referred to as 'the vehicle in question'), driven by respondent No. 1, owned by respondent No. 2, and insured with respondent No. 3.

4.1 According to the petitioner, on 16.6.2007, Smt. Tripta Devi, alongwith family members of Dharam Singh, was on her way, back to her native village, after paying the obeisance at Mata Vaishno Devi temple at Jammu, in the vehicle in question, which was being driven by respondent No. 1. At about 12:30 a.m., when they reached near village Jakh Channi, Vijaypur, on National Highway, the vehicle in question was hit by a speeding truck, whose registration number, could not be ascertained, as, the driver of the said truck drove away the vehicle, by taking advantage of the darkness.

4.2 After the accident, Tripta Devi was taken to Government Medical College, Hospital, Jammu, where she had been declared 'brought dead' and her postmortem was got conducted. The information

regarding accident was given to Police Station, Vijaypur, District Jammu (J&K), where FIR No. 57 of 2007, dated 16.6.2007, under Sections 279 and 337 of the Ranbir Penal Code (R.P.C.) was registered.

4.3 The age of deceased Tripta Devi has been mentioned in the petition, by the petitioner as 49 years, at the time of her death and she was stated to be house wife. Her contribution towards family has been mentioned @ Rs. 3300/- per month.

4.4. On the basis of above facts, a sum of Rs. 7,00,000/- has been claimed, alongwith interest @ 12% per annum.

5. When, put to notice, the claim petition has been contested by respondent No. 3 only. Respondents No. 1 and 2 have not bothered to file reply.

6. Respondent No. 3, in the reply, has taken preliminary objections with regard to maintainability of the petition; that the petition is vague; respondent No. 1, driver of the vehicle in question, was not holding any valid and effective driving license to drive the vehicle;

deceased Tripta Devi was travelling in the vehicle, as unauthorized and gratuitous passenger; the vehicle in question was sold by respondent No. 2, Dharam Singh, on hire purchase basis agreement and this fact has not been informed to the RTO concerned; the petition is bad for misjoinder and non-joinder of necessary parties and the petition has been filed in collusion with respondents No. 1 and 2.

7. On merits, the contents of the claim petition have been denied, mainly for want of knowledge.

8. The petitioner has filed rejoinder denying the preliminary objections, as well as, contents of the reply, by virtue of which, the petition has been contested.

9. On the basis of pleadings of the parties, the learned Tribunal has framed the following issues on

8.6.2009:

(i) Whether deceased Tripta Devi died because of use of motor vehicle HP 19-A 5184 on 16.6.2007 at about 12:30 a.m at Vijaypur District Jammu in J& K as alleged? OPP

(2) Whether the petitioner is entitled to compensation, if so, how much and from whom? OPP

(3) Whether the petition is not maintainable? OPR-3

(4) Whether the driver of vehicle No. HP 19A-5184 was not holding a valid and effective driving licence at the time of accident in question? OPR-3

(5) Whether the vehicle in question was being driven against the terms and conditions of the insurance policy? OPR3

(6) Relief.

10. Thereafter, the parties to the lis were directed to lead evidence.

11. After closure of the evidence, the learned Tribunal has awarded the amount, as mentioned above.

12. Feeling aggrieved from the said award, the present appeal has been filed, before this Court, on the ground that the learned Tribunal has mis-interpreted and misread the law and has not awarded any amount, on account of death of wife of the petitioner. The income of the deceased has not been taken into consideration, while awarding the compensation.

13. On the basis of above facts, a prayer has been made to allow the present appeal by modifying the award of compensation, as prayed for, in the petition.

14. Per contra, Mr. S.D. Gill, learned counsel appearing for respondent No. 3, has submitted that the learned Tribunal has rightly considered the stand of the parties and that the award does not require any interference by this Court.

15. After framing the issues, claimant Dilbag Singh appeared in the witness box as PW-1 and filed his affidavit, which is based on the assertions contained in the petition. This witness has admitted in the cross-examination, that he does not know as to how the accident in question had taken place. According to him, he has got recorded, in his petition, that the accident in question had taken place due to rash and negligent driving of the driver of some unknown vehicle. He has stated that his wife used to sell 15 kgs of milk per day. Apart from this, he has produced the copy of FIR Ext. PX and copy of postmortem report, Ext. PW1/B.

16. To rebut this witness, the Insurance Company has examined Mandeep Kumar, Registration Clerk, from the Office of SDM Amb, District Una. He has

proved the copy of Driving License of respondent No. 1, as Ext. RW1/A.

17. Respondent No. 1, Vipin Kumar has filed his affidavit, in which, he has taken the plea that on 16.6.2007, at about 12:30 a.m., in midnight, when, the vehicle in question, driven by him, reached near village Jakh Channi, a speeding truck came from opposite side and hit the vehicle driven by this witness. The driver of the said truck ran away from the spot alongwith vehicle by taking benefit of darkness.

18. The owner of the offending vehicle, Lajpat Rai Singh has also filed his affidavit. He has deposed about the fact that he has employed respondent No. 1 as driver after satisfying himself about the authenticity of the driving of respondent No. 1.

19. RW-5 Parmod Kumar Sharma has proved the report Ext. RW5/A.

20. The learned Tribunal has awarded a sum of Rs. 15,000/- as compensation. This amount has been awarded as transportation, as well as, funeral charges.

21. According to the learned Tribunal, the petitioner could not adduce evidence to show that deceased Tripta Devi was earning a sum of Rs. 3300/- per month and the petitioner was dependent on her. These findings have been assailed before this Court.

22. Death of deceased Tripta Devi, in the accident, involving the vehicle in question has been probalized by the petitioner by adducing the documentary evidence, i.e. copy of FIR Ext. PX and the postmortem report of deceased Tripta Devi, Ext. PW1/B.

23. In this case, while deciding issue No. 1, the learned Tribunal has categorically held that death of Tripta Devi had occurred on account of use of vehicle in question.

24. Neither the Insurance Company nor respondents No.1 and 2 have bothered to assail the findings of learned Tribunal, on issue No. 1.

25. In such situation, when there is no appeal, cross-appeal or cross-objections, on the findings of learned Tribunal on issue No. 1, then, the only question,

which requires to be determined in this case, is whether the learned Tribunal has wrongly held that the deceased was not contributing/earning anything, during her lifetime?

26. Women are doing multifarious activities in the household. The gratuitous services rendered by women cannot be equated with money.

27. The learned Tribunal has wrongly held that deceased Tripta Devi was not earning anything, whereas the Hon'ble Supreme Court in '**Lata Wadhwa & others versus State of Bihar & others**, 2001 (8) SCC 197, has held that women are doing multifarious activities in the household, as they are managing the entire family. As such, according to the Supreme Court, even the woman, who is working in the household, is entitled for compensation. Para-10 of the judgment is reproduced as under:

“10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered

by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs.36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs.50,000/- instead of Rs.25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000/- per annum and multiplier

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applied is eight. Though, the multiplier applied is correct, but the values of services rendered at Rs.10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs.20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs.50,000/- towards the conventional figure.”

(self emphasis supplied)

28. Judging the facts and circumstances of the case, and keeping in view the age of Smt. Tripta Devi, at the time of her death, which has been claimed as 49 years, this Court is of the view that the value of services, rendered by deceased Tripta Devi, being house wife, had she been alive, could be assessed as Rs. 3000/- per month, or to say, Rs. 36,000/- per annum. Out of this amount, a sum of Rs. 1000/- being $\frac{1}{3}$ rd of the contribution, is liable to be deducted, being personal expenses of Smt. Tripta Devi, had she been alive. Thus, her contribution comes to Rs. 2000/- per month, or to say Rs. 24,000/- per annum.

29. Since the petition had been filed, under Section 163-A of the Motor Vehicles Act, as such, the amount on account of future prospects or any other additional non-pecuniary heads, is not liable to be given to the petitioner. The claim petition, under Section 163-A of the M.V. Act is to be strictly decided, on the basis of the structural formula, provided in 2nd schedule of the M.V. Act.

30. The accident in question had taken place on 16.6.2007. On that day, the un-amended provisions of Section 163-A of the Act were applicable.

31. Judging the facts and circumstances of the case, and keeping in view the age of Smt. Tripta Devi, at the time of her death, which has been claimed as 49 years, this Court is of the view that the value of services, rendered by deceased Tripta Devi, being house wife, had she been alive, is Rs. 2000/- per month, or to say, Rs. 24000/- per annum. Keeping in view the age of Tripta Devi, at the time of her death, multiplier of 13,

as per 2nd schedule of the M.V. Act, is liable to applied, in the present case.

32. Applying the said multiplier, the compensation, to which the petitioner is entitled for, comes to Rs. 24000x13= Rs. 3,12,000/-. In addition to this, the petitioner is also entitled for the general damages, as per the 2nd schedule of the M.V. Act, which comes to Rs. 9500/- (Funeral expenses @ Rs. 2000/-+ Loss of consortium @ Rs. 5000/-+ Loss of estate @ Rs. 2500/-).

33. Thus, the petitioner is held entitled for a sum of Rs. 3,21,500/- (Rs. 3,12,000+ Rs. 9500/-), as compensation, on account of death of his wife, in the accident in question, arising out of use of motor vehicle.

34. Thus, the present appeal is allowed and the award passed by the learned Tribunal, as referred above, is modified in the above terms. The amount of compensation, awarded by the learned Tribunal is enhanced to Rs. 3,21,500/- from Rs. 15,000/-,

alongwith interest @ 6 % per annum, from the date of filing the petition, till realization of the entire amount.

35. The ultimate liability to pay the compensation amount, alongwith upto date interest, is upon respondent No. 3, being the insurer of the vehicle in question.

36. The costs of appeal is assessed at Rs. 5000/-. The record be sent back. The pending application(s), if any, are also disposed of.

**(Virender Singh)
Judge**

August 29 , 2023
Kalpana

High Court