IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(MVA) No.346 of 2014
Reserved on : 11.07.2025
Decided on : 28.10.2025

Barfi Devi & Anr. **...Appellants/Petitioners.**

Versus

Kaushalya Devi & Ors. **…Respondents.**

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?[1]

For the Appellant : ***Mr. Vinod Thakur and Mr. Raman Sharma, Advocates.***

For the Respondents : **Mr. Dhiraj Thakur, Advocate, for respondent No.1.**

Mr. Anil Kumar God, Advocate, for respondent No.2.

Mr. P.S. Chandel, Advocate, for respondent No.3.

Vivek Singh Thakur, Judge (Oral)

This appeal has been preferred by claimants, under Section 173 of the Motor Vehicles Act, 1988 ('M.V. Act'), against dismissal of their claim by Motor Accident Claims Tribunal, Ghumarwin, District Bilaspur, H.P. ('MACT') vide impugned award dated 13.08.2014 in MAC No.01/02 of 2011/10.

[1] *Whether the reporters of the local papers may be allowed to see the Judgment?* Yes

2. Parties herein shall be referred as per their status before the MACT in claim petition, for convenience. Petitioner No.1 is mother and petitioner No.2 is father of deceased-Vijay Kumari, who had expired on 25.05.2010 in a motor accident in reference in present matter.

3. I have gone through the record and have considered the submissions made by learned counsel for the parties.

4. Respondent No.1-Kaushalya Devi is owner of the Bus bearing registration No.HP-69-1388, involved in the accident. Respondent No.2-Chaman Lal is driver of the bus and respondent No.3-United India Insurance Company ('Insurance Company') is insurer of the bus.

5. Claimants preferred the claim petition before the MACT for awarding compensation amounting to ₹15,00,000/-, on account of death of their 21 years' old daughter-Vijay Kumari with submission that on 25.05.2010, deceased was travelling in Bus bearing registration No.HP-69-1388 from Rishikesh to Bhager and at about 2:05 PM, the bus driven by respondent No.2-Chaman Lal in rash and negligent manner, fell down below the road, causing multiple injuries to passengers, including Vijay Kumari (deceased) and Vijay Kumari succumbed to her injuries on the spot.

6. An FIR No.149 of 2010 dated 25.05.2010 was registered in Police Station Sadar, District Bilaspur, under Section 279, 337 and 304-A of Indian Penal Code, on the basis of information of one Raj Kumar after the accident. Dead body of deceased-Vijay Kumari was subjected to

postmortem in Regional Hospital, Bilaspur, on the same day on 25.05.2010 by Dr. Anupam Sharma (PW2).

7. Respondent Nos.1 (owner) and 2 (driver) filed a joint reply to the petition, denying the occurrence of the accident on account of rash & negligent act and driving of respondent No.2-Chaman Lal, by stating that no accident took place in any manner due to rash & negligent driving of respondent No.2 (driver of the vehicle), but with assertion that on the date of accident, there were heavy rains in the area and there was muddy road and deep curve on the spot, and due to technical defect, the vehicle skid down, whereupon, deceased at her own jumped from the vehicle at once, due to which she sustained injuries and died. It was stated that false FIR was lodged.

8. In reply to para 15, it was categorically stated that driver of the vehicle was respondent No.2-Chaman Lal, who was having valid and effective driving license for driving the vehicle/bus and insurer of the said bus was respondent No.3-Insurance Company. It was further stated in the reply that in the event of liability to pay compensation for the accident, respondent No.3-Insurance Company had to indemnify respondent No.1 & 2, because the vehicle/bus in question was insured with respondent No.3-Insurance Company and respondent No.2-Chaman Lal (driver) was having an effective driving license for driving the bus.

9. Respondent No.3-Insurance Company filed a separate reply with usual preliminary objections that claim petition was not maintainable;

vehicle in question was not having valid and legal documents, i.e. registration certificate, route permit and fitness etc.; the vehicle was being plied in contravention of provisions of MV Act and Rules framed thereunder; there was no contract of insurance between respondent No.3 (Insurance Company) and respondent No.1 (owner of the bus), at the time of the accident; driver of the bus was not having valid and effective driving license to drive the bus at the relevant point of time; compensation amount claimed by the petitioner was highly excessive. In reply on merits, the same objections were reiterated with denial of the claim that deceased was earning ₹10,000/- per month.

10. After considering the pleadings, MACT had framed following issues for determination:-

> "1. Whether on 25-5-2010 at 2.05 P.M. at Behna Jattan deceased Vijay Kumari died in a motor accident on account of bus No.HP-69-1388 being driven in a rash and negligent manner by respondent No.2, as alleged? OPP
> 2. If issue No. 1 above is proved in affirmative, whether the petitioners are entitled for compensation and if so, to what amount and from whom? OPP
> 3. Whether the present claim petition is not maintainable? OPR 1 to 3.
> 4. Whether the driver of bus No.HP-69-1388 respondent No.2 was not having valid and effective driving license to drive the vehicle? OPR-3.
> 5. Whether the vehicle was not having registration certificate, route permit, fitness certificate? OPR-3.
> 6. Whether there was no contract of insurance as alleged? OPR-3.
> 7. Relief."

11. Issue No.1 has been decided against the claimants with finding that it was not proved on record that deceased-Vijay Kumari had died in the accident involving the vehicle bearing registration No.HP-69-1388. Accordingly, Issue No.3 was decided in favour of the respondent holding that claim petition was not maintainable.

12. Considering the evidence on record, in findings returned by the MACT with respect to Issue No.2, it was concluded by MACT that, on the basis of evidence on record, an amount of ₹6,78,000/- would be payable to petitioner No.1 and the bus in question was being plied with valid and legal documents and was being driven by respondent No.2-Chaman Lal, having a valid and effective driving license to drive the same. Therefore, it was observed that respondent No.3-Insurance Company would be liable to pay the amount of compensation to petitioner No.1.

13. Issues No.4, 5 and 6 were decided against Insurance Company by referring the findings returned with respect to Issue No.2 that respondent No.2 was having valid and effective driving license to drive the bus, the vehicle was having valid registration certificate (Ex.RW1/A), route permit (Ex.RW1/B), and there was contract of insurance between respondent No.1 (owner of the bus) and Insurance Company (respondent No.3).

14. Respondent Nos.1, 2 & 3, i.e. owner, driver as well Insurance Company, have accepted the findings of the MACT rendered against them with respect to Issues No.2, 4, 5 & 6, because no appeal has been

preferred by them independently or by filing cross-objections/cross-appeals even after receiving notices in present appeal, whereas claimants have preferred present appeal against the findings returned by MACT with respect to Issues No.1 & 3 and also on the ground that deduction of 50% has been wrongly applied by the MACT at the time of determining the amount of compensation. Therefore, in present appeal, evidence with respect to Issues No.1 & 3 has to be assessed and evaluated to uphold or reverse the findings of the MACT on these issues.

15. Learned counsel for respondent No.3-Insurance Company has supported the judgment on the basis of findings returned by MACT, whereas, learned counsel for the claimants has submitted that complete material on record has not been considered and there is misreading and misappreciation of evidence on record.

16. For deciding the aforesaid issues against the claimants, MACT has discussed statements of PW3-Govind Ram (father of the deceased), RW3-Chaman Lal (respondent No.2-Driver) and Mark-X1 (copy of FIR).

17. The MACT has observed that the aforesaid evidences were not sufficient to prove the occurrence of the accident and death of deceased-Vijay Kumari in the said accident, involving the bus in reference with observation that contents of FIR were not proved by examining the complainant, who lodged it, and referring the statement of RW3-Chaman Lal (respondent No.2-Driver), wherein he deposed that he was not driving

the bus on the relevant day and no accident took place due to his rash & negligent driving and no case was registered against him (respondent No.2) regarding the accident in reference.

18. As referred *supra*, respondent Nos.1 & 2 had not denied occurrence of the accident and death of Vijay Kumari on 25.05.2010, when she was travelling in bus, rather they have tried to evade liability with vague denial that no accident took place in any manner due to rash & negligent driving of respondent No.2-Chaman Lal (driver) with explanation that on the date of occurrence the bus skid/rolled down the road, on account of mechanical defect, heavy rains, muddy road and deep curves on the spot, with further explanation that deceased died because she jumped from the bus at her own at that time. There is admission of occurrence of accident in the aforesaid plea taken by respondent Nos.1 & 2 in the reply. In the reply, it has nowhere been denied by respondent Nos.1 & 2 that respondent No.2-Chaman Lal was not driving the bus in reference at the time of accident, rather for evasive reply and in absence of express denial, but for statement that respondent No.2 was driver of the vehicle, it stands admitted by respondent Nos.1 & 2 that on 25.05.2010, an accident took place with the bus bearing registration No.HP-69-1388 involved in the accident being driven by respondent No.2-Chaman Lal and Vijay Kumari died in the said accident.

19. No evidence has been produced on record to substantiate the plea that Vijay Kumari jumped from the bus at the time of occurrence of the

accident. The facts pleaded, but not substantiated by evidence, cannot be relied upon to accept the plea of respondent Nos.1 & 2.

20. The deposition of respondent No.2-Chaman Lal as RW3, also creates doubt with respect to veracity of stand taken by respondent Nos.1 & 2. In reply to the petition, nowhere it was stated that on the day of accident, he was not driving the vehicle, but in his deposition in the Court as RW3, driver-Chaman Lal stated that on the day of occurrence, he was not driving the vehicle. This plea does not appear to be true version, because respondent No.2-Chaman Lal has categorically stated he was driver of the bus bearing registration No.HP-69-1388, owned by respondent No.1-Kaushalya Devi and in May 2010 also, he was driving the same bus. However, he not only denied that on 25.05.2010, he was driving the bus rashly & negligently and accident occurred on account of his rash & negligent driving, but has also stated that on that day he was not driving the vehicle. It is apt to notice here that despite admitting the fact that he was engaged as a driver by owner of the bus and he was also driving the same bus in May 2010, he expressed his ignorance about the name of the Conductor of the bus engaged on 25.05.2010 with further submission that name and address of Conductor would be in the knowledge of owner of the bus and that owner of the bus would be knowing that who was driving the bus on 25.05.2010.

21. In the claim petition, name of the driver was not mentioned with assertion that the same shall be disclosed by the owner of the bus.

After disclosure of name of driver by the owner, Chaman Lal was arrayed as respondent No.2. Thereafter, a joint reply was filed by respondent No.1 (owner) and respondent No.2 (driver), wherein it was nowhere stated that on 25.05.2010, respondent No.2 was not driving the bus, rather tone & tenor of the reply depicts that respondent No.2-Chaman Lal was driver of the bus at the time of occurrence of the accident on 25.05.2010.

22. In the claim petition, it has been claimed that deceased-Vijay Kumari died in the accident while travelling in the bus on 25.05.2010. In reply, the said facts have been admitted but, with explanation that Vijay Kumari died because she jumped from the bus at her own, when bus skid off the road.

23. From the aforesaid material on record, even in absence of proving the contents of the FIR, there is sufficient material to construe though infer that deceased-Vijay Kumari died in motor accident on 25.05.2010, involving the bus bearing registration No.HP-69-1388, while she was travelling from Rishikesh to Bhager and the bus being driven by respondent No.2-Chaman Lal, owned by respondent No.1-Kaushalya Devi and insured by respondent No.3-Insurance Company, met with an accident. The material on record balances the principle of preponderance of probability in favour of claimants.

24. In a motor accident claims, once it is proved that a person had died in the motor accident, then, applying principle of *res ipsa loquitur*, unless proved contrary by the owner and driver, it can be construed that

the accident took place on account of rash & negligent driving and act of the driver.

25. In present case, from the assertions in the reply of respondent Nos.1 & 2 and deposition of RW3-Chaman Lal, it is apparent that version of claimants is cogent, reliable and convincing, as it creates doubt about veracity of the stand of respondents, but proves occurrence of the accident and death of Vijay Kumari as claimed by claimants.

26. In view of above discussion, it is apparent that MACT has failed to appreciate the material evidence on record for deciding Issues No.1 & 3 and the findings returned by the MACT on these issues are perverse and deserve to be interfered with.

27. Considering the material on record and settled law, I do not find any illegality or perversity in deducting 50% amount from the earning of the deceased-Vijay Kumari towards personal expenses.

28. Accordingly, it is held that on the basis of material on record, as discussed *supra*, it stands duly proved that deceased-Vijay Kumari died in motor accident involving bus bearing registration No.HP-69-1388, being driven in rash & negligent manner by respondent No.2-Chaman Lal and therefore, claim petition was and is maintainable. Therefore, findings returned with respect to Issues No.1 & 3 are reversed. Findings on other issues have not been assailed by the respondents or anybody else, therefore, Claimant No.1 is held entitled for compensation @ ₹6,78,000/-

with interest @ 6% per annum thereon from the date of filing the petition till payment/deposit/ realisation thereof.

The compensation shall be paid by respondent No.3-Insurance Company to Claimant No.1-Barfi Devi by making the payment thereof within two weeks.

The present appeal is allowed and disposed of in aforesaid terms along with pending applications, if any.

(Vivek Singh Thakur),
Judge.

28th October, 2025
(Pardeep)