

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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FAO-338-1992 (O&M)
Date of decision : 21.12.2023

United India Insurance Company Limited

.....Appellant

Versus

Sobhawati Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Gaurav Gupta, Advocate, for the appellant.

Mr. Madhur Panwar, Advocate for
Mr. Drupad Sangwan, Advocate, for respondent No.1.

Mr. Rose Gupta, Advocate and
Ms. Yashika Walia, Advocate for respondent Nos.2 & 3.

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the award dated 20.12.1991 passed by the learned Motor Accidents Claims Tribunal, Hisar (for short ‘the Tribunal’), whereby a sum of Rs.1,92,000/- was awarded as compensation to claimant-respondent No.1, on account of death of one Jamuna Parshad Yadav, in a road side accident and the appellant being the insurer, along with the driver and owner of the offending vehicle was held jointly and severally liable to make the payment.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for the last more than 31 years, the counsel for the parties have no objection, if the same is decided on the basis of the available record.

3. Learned counsel for the appellant would contend that the Tribunal has fallen into an error in saddling the liability to satisfy the award upon the appellant-Insurance Company despite the fact that the deceased was a gratuitous passenger and therefore not covered under the terms and conditions of the policy.

4. On the other hand, the learned counsel for respondent Nos.2 and 3-owner and driver submitted that the vehicle was insured, therefore, the Tribunal has rightly held the appellant liable to make the payment of the compensation.

5. Learned counsel for claimant-respondent No.1 contends that the deceased was 25 years old at the relevant time and the only breadwinner of his family. The compensation awarded by the Tribunal is on the lower side and nothing has been awarded towards future prospects as also on account of the conventional heads i.e. loss of consortium, loss of estate and funeral expenses. Thus, he prays for enhancement of the compensation.

6. Heard learned counsel on either side and file perused.

7. Admittedly, the deceased, an employee of respondent No.2, was travelling in the truck, a commercial vehicle, owned by the said company for purpose of a public rally, when it being driven rashly and negligently at a high speed hit one side of the over bridge and turned turtle, whereupon he succumbed to the injuries. The Tribunal while allowing the claim petition fastened the liability upon the insurance company-appellant, the truck being insured therewith. Aggrieved therewith, the present appeal was filed.

8. Learned counsel are *ad idem* that the issue involved in the present case being of the liability for payment of compensation with regard to a

gratuitous passenger traveling in a commercial vehicle has already been decided in the connected cases i.e., FAO-38 and 39 of 1992 and FAO-1903-1993, alongwith which this appeal was initially admitted and thereafter listed. However, somehow, this case kept pending.

9. In FAO Nos.38 and 39 ibid filed by the owner of the offending vehicle, the judgment rendered dated 06.01.2016, dismissing the appeals reads thus:

“Both the appeals address the similar issue of whether the owner would be entitled to indemnity from the insurer for the damages resulting from the motor accident involving death or injuries to persons travelling in a goods vehicle. The counsel would refer me to the premium of insurance policy that registers the fact of payment of additional premium of Rs. 30/- for covering the risk to the loadman. The loadman employed by the owner of the vehicle stands completely on a different footing to persons, who were qualified for being compulsorily required to be covered under Section 147 of the Motor Vehicles Act only by an amendment of Act 54 of 1994 that took effect on 14.11.1994. Before the said date, any person in a goods carriage even if he is the owner travelling along with the goods had no policy coverage. There is no argument that the persons that died or were injured were loadmen employed by the owner of the vehicle to claim indemnity. The liability cast on the owner and excluding the Insurance Company was, under the circumstances, justified. I will not find any reason to fault with the judgment for interference in appeal. Both the appeals are dismissed.”

10. In FAO 1903 ibid, the relevant paras of judgment dated 21.10.2016, whereby the appeal of the Insurance company was allowed, read thus:

“[2]. The grievance of the appellant-Insurance Company is only to the extent that since no stay was granted while admitting the appeal, therefore, Insurance Company has already made good the payment in favour of claimants, but appellant is entitled to recover the amount from the driver and owner of the offending vehicle.

[3]. Learned counsel for the appellant contended that the view taken in New India Assurance Company Ltd. Vs

Satpal Singh, 2000 ACJ 1 (SC) was reversed by the Apex Court in New India Assurance Company Ltd. Vs. Asha Rani, 2003 ACJ 1 (SC). Learned counsel submitted that in New India Assurance Company Ltd. Vs. Vedwati and others, 2007 ACJ 1043 (SC) and Ajit an another Vs. Krishna Devi and another, 2013 ACJ 1773 (P&H) (HC), it was held that in case of goods vehicle, Insurance Company is not liable in respect of risk of the passenger. The owner of the goods vehicle was under obligation to get his vehicle insured for covering risk of any passenger travelling in goods vehicle. The gratuitous passenger travelling in the goods vehicle in violation of the policy cannot fasten liability on the Insurance Company in the event of getting himself injured on account of accident of the vehicle in which he was travelling. Gratuitous passenger if not authorized representative of the owner of the goods would not involve the Insurance Company for any liability to pay compensation. Insurance Company does not insure gratuitous passenger, only an exception is that if the authorized representative of the owner himself is travelling along with the goods then Insurance Company is liable.

[4]. On the basis of ratio as laid down hereinabove, it can be safely held that Raj Kumar deceased who took lift in the four wheeler bearing No.HR-21-2297 was a gratuitous passenger. The vehicle met with an accident with tractor bearing No.HNH-5103 which was parked on the left side of the road. The tractor-trolley was loaded with wooden poles (ballies). The driver of the Matador/four wheeler was allegedly driving the vehicle in a rash and negligent manner. Many persons were travelling in the said Matador. In the process of overtaking the said tractor-trolley, wooden poles loaded in the trolley had struck against the person of Raj Kumar who was travelling in the Matador. Raj Kumar sustained grievous/fatal injuries and died at the spot. He was declared brought dead in the hospital.

[5]. Evidently, Raj Kumar was a gratuitous passenger. The vehicle was not insured for the risk of private person like Raj Kumar, nor Raj Kumar was owner of the Matador. The vehicle was a goods vehicle, therefore, ratio laid down in the aforesaid judgments duly covers the proposition. There is no evidence on record to show that extra premium of insurance was also paid for any private person covering the risk to that extent. Authorized person by the owner of the vehicle stands completely on a different footing to a person who was given permission to board a vehicle either as gratuitous passenger or as a commuter, who were qualified for being compulsorily required to be covered under Section 147 of the Motor Vehicles Act by dint of amendment of Act No.54 of 1994.

[6]. In order dated 09.03.2015, it was noticed that

respondent No.7 i.e. owner of Matador/four wheeler refused to accept the service. Vide order dated 11.08.2015, respondent No.7 was proceeded against ex parte. Respondent No.6 driver of the Matador/four wheeler was duly represented by the counsel, but none appeared on his behalf.

[7]. Since the appellant has already satisfied the award passed by the Tribunal, therefore, Insurance Company shall have recovery right to recover the amount so paid by it from the owner and driver of the offending vehicle in accordance with law. Consequently, appeal is allowed in the aforesaid manner.”

11. The Tribunal on the basis of the statement of the deceased Ex.PA recorded while he was admitted in the hospital on account of the injuries suffered by him in the accident, which stood corroborated by the statements of PW2 Sarwan, his co-passenger and PW3 Girish Sharma, as per which, the driver of the truck was driving rashly and negligently, causing the accident and injured Jamuna Parsad, who died. Consequently, compensation to the tune of Rs.1,92,000/- was awarded to the claimants by taking his income as Rs.1250/- per month as he was employed with respondent No.2, there being no rebuttal to the same. The Insurance Company as also owner and driver were held jointly and severally liable to pay the compensation. However, the award was stayed in appeal by this Court vide order dated 24.02.1992.

12. In view of the above, the finding of the Tribunal to the extent of fastening the liability upon Insurance Company to pay the compensation is reversed.

13. Though no appeal or cross-objections have been filed at the hands of the claimants, however, Hon'ble the Supreme Court in **A.P. SRTC vs. M. Ramadevi**, (2008) 3 SCC 379, while relying on **Nagappa vs. Gurudayal Singh** (2003) 2 SCC 274 affirmed the order of High Court enhancing the compensation without any plea being raised for the same. Following these

footsteps, in the cases of **National Insurance Co. Ltd. vs. Mr Alwin Lobo**, 2023 ACJ 2054, **United India Insurance Co. Ltd. vs. Hardev Singh**, 2017 SCC OnLine P&H 2937 and **National Insurance Co. Ltd. vs. Komal**, 2014 ACJ 1540, the compensation was also increased in the absence of any appeal by the claimants. The relevant paras of **Komal** (supra) read thus:

“12. Section 168 of the Motor Vehicles Act, 1988 empowers the Court to award such compensation as appears to be just which has been interpreted to mean just in accordance with law and it can be more than the amount claimed by the claimants. The provisions of the Motor Vehicles Act, 1988 are clearly a beneficial legislation and hence should be interpreted in a way to enable the Court to assess just compensation. The scope of Order 41 Rule 33 of the Code of Civil Procedure and the power of the High Court to enhance the award amount in accident cases in the absence of cross objections has been discussed by the Supreme Court in Nagappa v. Gurudayal Singh, AIR 2003 Supreme Court 674 where the Apex Court has held that the Court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases wherefrom the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the Court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections.

13. (ii) In Oriental Fire And General Insurance Co. Ltd. v. Amarsing Pratapsing Sikliker, I (1993) ACC 627, the Division Bench of Gujarat High held as under:-

“The underlying purport and design of the provisions of Order 41, Rule 33 would clearly go to show that the Parliament has enacted such a provision with a view that the court could rise to the occasion and render substantial justice between the parties even in absence of cross-objections or appeal. Thus, the framers of the Code, who had hardly any concept of social justice then in that period of 1908, had enacted under Order 41, Rule 33 that even if the appellant may not have made a perfect claim the court should not become silent spectator and remain impotent to give appropriate relief to one who rightly deserves the potentiality. All the courts should deliver justice according to the needs of the litigants and the circumstances emerging from the evidence on record, has been thus recognised by

the provisions incorporated in Order 41, Rule 33 of the Code. Therefore, in absence of the cross-objections by the claimant, this court can invoke the provisions of Order 41, Rule 33 even if required, suo motu and enhance the compensation or rate of interest. In the case of National Insurance Co. Ltd. v. Tulsi Devi, reported in 1988 ACJ 962 : (AIR 1988 Rajasthan 191) it was held by the Rajasthan High Court that under Order 41, Rule 33 of the Code, the appellate court can saddle the insurer with enhanced liability.”

14. Evidently, Jamuna Parshad Yadav, husband of respondent No.1 died, while travelling in the truck, which met with the fateful accident due to rash and negligent driving of its driver-respondent No.3, thus this aspect requires no further scrutiny. Now coming down to the aspect of enhancement of compensation, PW1, Sobhawati-claimant in her statement categorically deposed that the deceased-her husband, was employed in Jindal Strips with a salary of Rs.1250/- per month, which was corroborated by PW4 Ram Kishan Bansal, representative of the said company, thus, the income taken by the Tribunal cannot be faulted with. Further a profitable reference can be made to the dictum of law laid down in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009 and **Janabai vs. ICICI Lombard Insurance Co. Ltd.**, (2022) 10 SCC 512, consequentially whereupon, claimant-respondent No.1 is hereby held entitled to grant of future prospects to the extent of 40%, he being in a private job and also for the compensation under the conventional heads i.e. Rs.36,000/- for funeral expenses and loss of estate and Rs.48,000/- for loss of consortium to her. As the deceased was 25 years of age, the multiplier of 18 ought to have been applied and there being one dependent, the deduction of 1/3rd should have been made towards personal expenses of the deceased.

15. As a corollary, the total compensation comes to Rs.3,36,000/- (1,250 (monthly income) + 40% (towards future prospects) - 1/3rd (deduction) x 12 x 18 (multiplier) + Rs.84,000/- (conventional heads). Thus, the enhanced compensation of Rs.1,44,000/-, over and above the amount of Rs.1,92,000/- already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its realization, shall be paid to the claimant-respondent No.1 within a period of 2 months from the date of receipt of a certified copy of this judgment. Failing which, the amount shall accrue an interest as awarded by the Tribunal. Since the Insurance company of the offending vehicle has been held not liable, the said amount will be paid by the owner and driver, jointly and severally.

16. The present appeal stands disposed of accordingly and the award is modified to the extent aforesaid.

21.12.2023
Ankur

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No