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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-5192-2006 (O&M)
Reserved on : 20.11.2024
Pronounced on:-19.12.2024

Suresh Kumar and Others

....Appellants

VERSUS

Arun Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kapil Aggarwal, Advocate, for the appellants.

Mr. Gurpreet Singh Ahluwalia, Advocate for respondent No.3.

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SUDEEPTI SHARMA, J.

1. The present appeal has been preferred against award dated 12.08.2006 passed in claim petition filed under Sections 163-A/140 of the Motor Vehicles Act, 1988, by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal') for enhancement of compensation granted to the claimants/appellants, who are legal heirs of the deceased.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 11.05.2005, respondent No.1 Arun Kumar was taking her sister Sudha @ Gayatri on motor cycle No.HR-35-B-6878 from Narnaul to Niyamatpur. At about 5/6:00 PM, when they reached near village Nayan, a stray dog came in front of the motorcycle. Respondent No.1 Arun Kumar tried to save his motorcycle so that it did not strike the stray dog. It lost control and resultantly Gayatri @ Sudha (since deceased) fell from the motor cycle and received multiple injuries including injuries on her head. The said accident was seen by Chhaju Ram and one Sanwat Ram. Sudha @ Gayatri was taken to Nangal

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Chaudhary for medical aid and from there, she was referred to SMS Jaipur, where she succumbed to her injuries on 12.05.2005. The accident occurred on account of negligent driving of motorcycle by respondent No.1.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether petitioners prove that Sudha @ Gayatri died in a motor vehicle accident which took place on 11.05.2005 at about 5/6:00 PM while she was travelling on motor-cycle bearing No.HR-35-B-6878 as alleged? OPP
2. Whether the petitioners are the LRs – dependants of the deceased? OPP
3. To what amount of compensation, if any, the petitioners are entitled to and from whom? OPP
4. Whether the petition is not maintainable? OPR
5. Whether respondent No.1 was not having a valid and effective driving licence on the date of accident? OPR
6. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.2,24,112/- alongwith interest @ 7% per annum. Hence the claimants/appellants filed the present appeal for enhancement of compensation awarded by the Tribunal.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PARTIES**

6. Learned counsel for the claimants-appellants has made the following submissions:-

- i) That the amount assessed by the learned Tribunal is on the lower side.
- ii) That Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act.
- iii) That the present case is covered by the judgment rendered by this Court in **FAO No.4301 of 2006**, titled as **“Akajit Kaur and Others Vs. Parveen Kumar and Others.”** wherein the claim under Section 163-A of the Motor Vehicles Act, 1988 was converted to Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) by relying upon the judgment of Hon’ble *Supreme Court in the case of Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]* wherein it was held that Section 164 of the Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) provides for payment of compensation in case of death in the amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs.
- iv) That the Tribunal has erred in absolving insurance company from the liability to pay the compensation on the ground that the deceased was a pillion rider and the policy in

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question was statutory policy and this policy does not cover the risk of death or bodily injury to gratuitous passenger.

He, therefore, prays that the present appeal be allowed and the amount of compensation be enhanced.

7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. A perusal of the award indicates that in the present case the claimants filed the claim petition seeking compensation on account of the death of Sudha @ Gayatri, who was 35 years old, at the time of accident. The Tribunal observed that in the absence of any proof of notional income, a sum of Rs.2,24,112/- is to be awarded in the interest of justice. Since Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act, therefore, the appellants herein are entitled to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in case of death in the amount of Rs.5 lakh and in case grievous hurt of Rs.2.5 lakh.

10. Further, this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-



“11. *Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board** [2022(4) TAC 738] held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.*

12. *This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon’ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.”*

11. In view of the above, the claimants/appellants are held entitled to compensation to the tune of Rs.5 lakhs, which shall be distributed as per the same ratio as awarded by the Tribunal in its award dated 12.08.2006 .



12. So far as the contention of learned counsel for the appellant regarding the insurance company's liability to pay the compensation in case of gratuitous passenger is concerned, the issue is no more *res integra* as co-ordinate Bench of this Court in the case of **Shiv Lochan Singh @ Bhola Versus National Insurance Co. Ltd. and others 2018(1) RCR(Civil) 559** has already settled the issue and held as under:-

“42. The provisions of Motor Vehicle Act, 1988 make a positive provision of compulsory insurance of a motor vehicle before bringing it on the road. Still further the Act makes a compulsory provision for covering of all claims qua third party in case of damages arising from an accident involving such an insured vehicle. Hence the attempt of the insurance companies to avoid statutory liability by creating artificial distinction of Comprehensive/Package policy and the alleged 'Act only policy' does not stand legal scrutiny under the provisions of the New Act. Needless to say that qua the claim for damages to third party liability; every policy has to be taken as 'Act Policy' only, since it is mandatory to be issued by the Insurance Company and it is mandatory to be obtained by the owner of the vehicle under the provisions of the Motor Vehicle Act. In that sense every policy, qua third party, can be said to be and has to be only an 'Act Policy'. Under the provisions of the Old Act since the vehicles other than the vehicles for carrying passengers for hire or reward (i.e. private passenger car/motor cycle) were excluded from the Compulsory Insurance. So the Insurance Companies were very much right in creating category of 'Act Policy' and 'Comprehensive Policy';



where separate premium was charged for covering the unpaid or gratuitous passengers in private passenger car and pillion rider on a motor cycle. But since under the provisions of the New Act, as discussed above, due to not carrying forward the Proviso (ii) of Section 95 (1)(b)(i) of Old Act in Section 147(1)(b)(i) of the New Act, even the unpaid passengers in private passenger car and a pillion rider on a Motor Cycle are also covered within the scope of Compulsory Insurance required by Section 147(1)(b)(i) of the Act, therefore, to cover such unpaid passengers and pillion rider, no separate premium is required to be paid and hence no distinction can be made on the basis of description of policy as 'Comprehensive Policy/Package Policy' or 'Act only policy'. May be, the insurance company can created another class of policy called as 'Comprehensive' or 'Package Policy' for covering some extra risk like qua the driver, conductor or employee of the owner, which are still excluded from Compulsory Insurance by virtue of Proviso(i) of Section 147(1)(b), by charging some extra premium. But that classification created by the insurance company cannot be made a ground by it for avoiding liability arising from an insured vehicle, qua the damages to the third party, including passengers in private passenger car/pillion rider on a Motor Cycle. Needless to say that insurance company can charge only a single consolidated premium for covering all risks qua third party, since it is compulsory and consolidated insurance for covering all third party claims under the provisions of the Motor Vehicles Act. Insurance company is not



entitled and authorised to create differential policies even for third party claim cover, by categorizing the separate amounts of premium to be charged from the insured. Once the third party insurance is compulsory, it is compulsory for all purposes and for all persons falling in definition of third party. Hence the distinction of 'Act only Policy' and 'Package Policy' do not hold good; qua covering the claim for the damage caused to third party, which include the passengers in a private passenger car and a pillion rider on a Motor Cycle”.

13. In view of the above, Tribunal’s finding qua absolving the insurance company to pay the compensation is hereby set aside.

14. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition, till the date of its realization.

15. The Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two months from the date of receipt of copy of judgment. The appellants-claimants are directed to furnish their bank account details to the Insurance Company/Tribunal. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the bank accounts of the appellants-claimants as per ratio settled in the award dated 12.08.2006.

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16. In view of the order passed in FAO No.1682 of 2007 dated 18.07.2024, the insurance company is hereby directed to disburse the current scheduled fee to Mr. Gurpreet Singh Ahluwalia, Advocate within a period of twenty days from the date of receipt of copy of this judgment.

17. Disposed of accordingly.

18. Pending applications, if any, also stand disposed off.

December 19, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No