IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F. A.O. No. 2731 of 1996
Date of decision : February 04, 2015

Ashok Kumar Aggarwal and another

....Appellants

versus

Punjab State Cooperative Milk Producers Federation Ltd. (Milkfed) and others

....Respondents

F. A.O. No. 2392 of 1996

National Insurance Company Ltd.

....Appellant

versus

Ashok Kumar Aggarwal and others

....Respondents

F. A.O. No. 523 of 1997

Punjab State Cooperative Milk Producers Federation Ltd. (Milkfed) and another

....Appellants

versus

Ashok Kumar Aggarwal and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. K.S.Dhillon, Advocate for
Mr. Amar Vivek, Advocate, for the claimants

Mr. Sehajbir Singh, Advocate for
Mr. DS Patwalia, Sr. Advocate for Milkfed-owner

Mr. Neeraj Khanna, Advocate for National Insurance Company

None for driver-Balbir Singh

Fateh Deep Singh, J. (Oral)

The above three appeals though are by different sets of appellants but having arisen out of a common award dated 19.3.1996 passed by learned Motor Accident Claims Tribunal, Amritsar, and thus to facilitate brevity are being disposed of together. FAO No. 2731 of 1996 is by the claimants claiming enhancement of the compensation whereas FAO No. 2392 of 1996 and FAO No. 523 of 1997 are by the insurer and owner of the vehicle respectively challenging the very award and the findings of the Tribunal qua the liability to pay compensation.

Heard Mr. K.S.Dhillon, Advocate for Mr. Amar Vivek, Advocate for the claimants, Mr. Sehajbir Singh, Advocate for Mr. DS Patwalia, Sr. Advocate for Milkfed-owner, Mr. Neeraj Khanna, Advocate for National Insurance Company whereas none has appeared for driver-Balbir

Singh and perused the records.

At the very onset of the arguments, counsel for the owner and insurer have made averments that they do not challenge the findings of the Tribunal as well as the manner and mode of the accident as has been arrived at by the learned Tribunal which has held that the death of Raghav Aggarwal who was travelling on a Moped No. PB-08-E-9917 was on account of rash and negligent driving of truck no. PUE-2505 by Balbir Singh its driver and therefore, the findings needs to be upheld as returned by the Tribunal.

The first argument revolve around the very quantum of compensation regarding which issue no. 1 has been framed. With all fairness, counsel representing various sets of parties have fairly conceded that they do not agitate inter-se relationship of claimants Ashok Kumar Aggarwal, Kamla Aggarwal who are parents and Tilak Raj Aggarwal grand-father of the deceased. It is the case of the claimants as has been asserted on behalf of the claimants that the deceased though was a student and was assisting the family business and though claimed that he was earning Rs 2000/- per month though has sought to be opposed on behalf counsel for other parties as well as the contention that he was being paid Rs 50,000/- by maternal grandfather. However, unrefuted evidence bears out that he was a student at Amritsar while his parents were residing at Batala at the time of his death. As per date of birth certificate, his date of birth was 24.10.1976 and therefore, at the time of the accident was aged around 18 years and being proved to be the student of 10+1. Even if for the sake of arguments it is admitted that he was not earning anything but have regard to his age, in view of the settled position of law, notional income needs to be taken. Keeping in view the date of the accident, it could be safely concluded that at that time his notional income needs to be taken at Rs 2000/- per month which is reasonable and could not be opposed by other contestants. Taking one half out of this for the expenses for own upkeepment and maintenance of the deceased he must be contributing Rs 1000/- per month for the family and therefore, annual dependency comes to Rs 12,000/-. Applying the multiplier of 18, as per ***Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (6) SCC 121,*** the compensation comes to Rs 2,16,000/-. Besides this, the family must have spent some money on last rites and ceremonies. Parents have lost their young son, a source of love and affection as well as protection and though no amount of compensation can assuage the feeling of wrong done to them and in the absence of any worth-while evidence, by some guess work and hypothetical calculations, a sum of Rs 2 lacs needs to be awarded under these conventional heads and therefore, total compensation comes to Rs 4,16,000/-. The finds of Tribunal thus are on the lower side and cannot be termed to be just and fair compensation. The claimants shall also be entitled to interest @ 7.5% per annum on the enhanced compensation from the date of filing of the appeal till realization of the amount. Interim compensation paid, if any, shall be adjusted. The stipulations laid down by the Tribunal regarding disbursement of the compensation need not be disturbed. Thus stand of the insurer and owner qua quantum of compensation is untenable.

The next contentious issue revolves around very legality and validity of the driving licence. Driver Balbir Singh is engaged by instrumentality of the State and it is claimed that he was holding driving licence no. 1228/75 as per the same placed on the record by way of photo copy though it is argued that the letter of the issuing authority by virtue of Ex. R1 have taken the stand that it was forged and fabricated document and Sh. Neeraj Khanna, counsel for the insurer-appellant has sought to argue that the insurer cannot be held liable to indemnify the claimants or the owner or driver is sought to be refuted on behalf of the appellant-owner's counsel Sh. Sehajbir Singh who has assailed that the same cannot be legitimately taken as piece of legal evidence. Though there is finding in para 8 of the impugned award that even if the driver does not have a valid driving licence even then the insurer cannot escape from its liability from paying third party is certainly correct appreciation. However, the onus of this issue regarding driving licence is on the insurer who as per settled preposition of law was supposed to prove the same. Mere letter Ex. R1 from the authority without any known origin and how it has come about and that too without affording driver and owner to cross-examine the witness certainly cannot clothe document Ex. R1 with any legal sanctity and cannot be taken as legitimate and at the same time neither the driver nor the owner who were contesting the matter or have bothered to step into witness box and set their side of story and rake up their defence are matters which have their bearing on the outcome of the case in terms of section 114 of the Evidence Act. Thus, in the totality of the circumstances, and there being no real contest since the owner of the offending vehicle is an instrumentality of the State, it would subserve the ends of justice if the questions of legality and validity are left open to be decided before the appropriate executing authority. However, in case the insurer succeeds in proving that the licence was fake or invalid and there is violation qua it, it reserves its right to recover the amount from the owner and driver jointly and severally.

In view of the foregoing discussion, FAO No. 2731 of 1996 filed by claimants-appellants is allowed and FAO No. 2392 of 1996 filed by the insurer and FAO No. 523 of 1997 filed by owner are dismissed qua quantum of compensation but are disposed of accordingly as per these observations qua validity of the licence.

(Fateh Deep Singh)
February 04, 2015 **Judge**
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