IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1033 of 2011 (O&M)
Date of decision: 01.09.2015

Raj Kaur and others

... Appellants

versus

Gurnam Singh and others

.... Respondents

2. FAO No. 4053 of 2011 (O&M)

Sukhwinder Kaur

... Appellant

versus

Gurnam Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashit Malik, Advocate for the appellants.

Mr. Amit Kashyap, Advocate for
Mr. Rajinder Goyal, Advocate for respondent No.1.

Mr. Vikas Mohan Gupta, Advocate for respondent No.3.

K.Kannan, J.

Both the appeals are connected and arising out of the same accident. It was a case of the claimants that the four-wheeler which was driven by the deceased whose representatives are the claimants in FAO No. 4053 of 2011 dashed against a stationary truck insured with 3rd respondent. The passenger in the car also died and his representative are the claimants which is the subject matter in FAO No. 1033 of 2011.

The accident had taken place at a toll barrier in a Village and the contention was that there are several vehicles parked one behind the other and when there was yet another car coming from the opposite direction with its headlights on, the deceased driver got blinded by the powerful lights and hit the back side of the truck which was lying parked without headlight or parking lights on. An eye witness to the incident had made reference about the stationary vehicle as having been parked without any lights and FIR had been registered in that regard. The claim petitions were dismissed by the Tribunal on the finding that the deceased driver himself is responsible for the accident and no negligence could be attributed to the owner or the driver of the insured vehicle. It is against the dismissal of the petitions that the appeals have been filed.

In the manner in which the complaint is filed and the evidence is given at the trial stating that the stationary vehicle against which the deceased driver had driven the vehicle when it had been lying parked without parking lights on, there must be surely the liability attributed to the owner and driver of the stationary vehicle. Section 126 of the Motors Vehicles Act specifically mandates that no person driving or in-charge of the motor vehicle shall cause or allow the vehicle to remain stationary in any public place unless there was a driver at the driver's seat a duly licenced person to drive the vehicle or when the mechanism had been stopped and a brake had been applied or such other measures taken to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver. There are inevitable situations where a vehicle has to remain parked even in a public place such as when there is a toll barrier and the driver has to stop up the vehicle but must keep sufficient indication of stationary character of the vehicle. If there was an evidence that the stationary vehicle had not headlights on or even the parking lights then I will take that there existed negligence on the part of the owner/ driver of the truck and as far as the passenger in the car was concerned it should only be taken as a case of composite negligence of drivers of both vehicles, namely, the driver of the stationary vehicle who had parked the vehicle without the parking lights and the deceased driver who had not exercised caution to slow down and be in a position to completely stop the vehicle at the toll barrier when he saw that there was a stationary vehicle. If the driver had been blinded by powerful lights of the vehicle coming from the opposite side and if he had been driving the vehicle in reasonable speed, and had applied even a modicum of care, he could have averted the accident. Accident invariably assumes negligence, for, a careful driving and an accident just cannot happen altogether. It would be indeed an oxymoron to state that he carefully dashed against another vehicle. I would, therefore, assume that the deceased driver had contributed to the accident and I will apportion the liability between the deceased driver and the driver of the stationary vehicle as 75:25 respectively.

As far as the claimants of the passenger of the car are concerned, no portion of the entitlement could be abated. They are entitled to treat the case as composite negligence and claim the entire amount against the insurer of the stationary vehicle. The deceased was said to 36 years of age having a dairy farm. Widow, minor child and father filed the case but father appears to have expired. I would take an average income for the deceased so supporting a family of wife and children at Rs. 4,000/- making a deduction of 1/3 and apply a multiplier of 15. I will also grant Rs. 1,00,000/- for loss of consortium and Rs. 1,00,000/- for love and affection of the child and provided for Rs. 25,000/- towards funeral expenses and Rs. 5,000/- towards loss to estate. The tabulation in FAO No. 1033 of 2011 is done as under:

Fatal	Date of accident	05.08.2008	
Age	36		
Occupation	Diary Farm		
Claimants	Widow, minor child		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income		
2.	Add, % of increase, 30%/50%		4000
3.	Deduction, 1/2, 1/3, 1/4,		2,66,666/-
4.	Multiplicand		32,000/-
5.	Multiplier		15
6.	Loss of dependence		4,80,000/-
7.	Medical Expenses		
8.	Loss of		1,00,000/-

	Consortium		
9.	Loss of love and affection		1,00,000/-
10.	Loss to estate		5,000/-
11.	Funeral Expenses		25,000/-
	Total		7,10,000/-

The total compensation will be Rs. 7,10,000/-. The compensation shall also attract interest @ 9% from the date of the petition till the date of payment. The liability shall be on the insurance company which will have the right to endorse contribution to the accident.

The apportionment of liability which I have made is only for consideration of the entitlement of the representatives of the driver and should there be an independent action by the insurer against the owner or the insurer of the vehicle which the deceased driver was driving, it will be open for a Court to re-appraise the issue of apportionment for any decision rendered in the absence of the insurer or the owner of the vehicle cannot obviously bind them. The Insurance Company will resort to independent action which the liability could be independently assessed.

As regards the claim in FAO NO. 1453 of 2011, the deceased driver was 21 years of age and said to be earning Rs. 5,500/- per month. The various heads of claim for the claimants who is the mother is tabulated as under:-

Fatal	Date of accident	05.08.2008	
Age	21		

Occupation	Driver		
Claimants	Mother		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income		
2.	Add, % of increase, 30%/50%		8,250/-
3.	Deduction, 1/2, 1/3, 1/4,		1/4, 4,125/-
4.	Multiplicand		49,500/-
5.	Multiplier		18
6.	Loss of dependence		8,91,000
7.	Medical Expenses		
8.	Loss of Consortium		
9.	Loss of love and affection		1,00,000/-
10.	Loss to estate		5,000/-
11.	Funeral Expenses		25,000/-
	Total		10,21,000/-

After determining the entire amount under the various heads of compensation after providing for his own negligence by deducting 75%, the amount will be Rs. 2,55,000/- and this amount will attract interest @ 9% from the date of the petition till the date of payment. No recoveries will be possible for the Insurance Company against the estate of the deceased since the amount determined is only for the percentage of negligence attributed to the driver of the stationary vehicle which was insured with the insurer.

The appeals are allowed.

(K.KANNAN)
JUDGE

01.09.2015
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