

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

FAO No.3864 of 2010 (O&M)

Date of Decision:13.02.2015

Cholamandalam MS General Insurance Company Ltd.

....Appellant

Versus

Pinki Rani and others

....Respondents

AND

(2)

FAO No.1127 of 2011 (O&M)

Pinki Rani and others

....Appellants

Versus

Radha Kishan and others

....Respondents

CORAM:**HON'BLE MS. JUSTICE NAVITA SINGH**

Present:

Ms. Vandana Malhotra, Advocate with
 Ms. Monika Jangra, Advocate for the appellant in FAO No.
 3864 and for respondent No.3 in FAO No.1127.

Mr. Kewal Singh, Advocate for
 Mr. Hemant Bassi, Advocate for respondents No.1 to 4 in
 FAO No.3864 and for the appellants in FAO No.1127.

NAVITA SINGH, J.

1. Both the appeals arose out of the same award dated 19.4.2010 passed by Motor Accident Claims Tribunal, Ambala (Tribunal for short), whereby the claimants i.e. appellant in FAO No.1127, were granted compensation to the tune of Rs.14,55,000/- for the death of Kundan Kumar Adhlakha alias Kundan Lal. The appellants were aggrieved finding the compensation inadequate, while the Insurance Company filed the appeal on the ground that the compensation was excessive and also the deceased contributed in occurrence of the accident, being negligent himself as well.

2. The case set up by the claimants was that on 21.5.2008 the deceased was travelling from Kala Amb to Naraingarh on motor-cycle No. HR-04B-8151 while his cousin brother Mahabir Singh was following him on scooter No.HR-01-8514. The offending truck after overtaking the scooter of Mahabir Singh struck the motor-cycle of the deceased from behind.

3. Counsel for the Insurance Company argued that the truck was falsely involved because in the FIR, the number of the vehicle was not given and Mahabir Singh was introduced as an eye witness. She further contended that even if it be taken that the accident had occurred in the manner propounded by the claimants, the deceased was clearly negligent because he was driving the motor-cycle in the middle of the road. If he had been driving on his left, where two-wheelers should be on the road, the truck could not have hit him after overtaking the scooter of Mahabir Singh.

4. The contention on behalf of the Insurance Company regarding false involvement of the vehicle is not acceptable because it came in evidence that the number plate of the truck got entangled with the motor-cycle and was found on the road in that position. Since the truck rammed into the motor-cycle from behind, the front number plate of the truck must have got entangled with rear portion of the motor-cycle, either with the number plate or otherwise. Rather the number plate having been found at the spot, it was clear that it was the offending truck which had hit the motor-cycle from behind.

5. So far as the other contention regarding negligence of the deceased is there, the argument is well founded and is liable to be taken into account. If the deceased was driving on the extreme left side of the road, it was not possible for the truck to have hit him because the truck being a heavy vehicle, while overtaking the scooter, must have come much in the middle of the road and

rather more towards the right half of the road and unless the motor-cycle was there in front in the middle, no accident would have occurred. The deceased was, therefore, negligent and contributed towards the occurrence of the accident, as he was not driving safely. It is, therefore, held that it was a case of contributory negligence.

6. Regarding income of the deceased, counsel for the Insurance Company vehemently argued that without proper proof, income of the deceased was taken to be Rs.10,000/- per month. The Tribunal erred in not appreciating the fact that the claimants examined Jai Narain (PW5), who simply stated that the deceased was a partner with him as in the business of wine contractors, he was looking after the liquor vends. It was stated by the witness that he was a wine contractor himself and partner in three licenses, but the licenses were not proved by the witness. Also he deposed that the deceased was looking after the vends and was paid a salary of Rs.10,000/- per month. He brought the day book, according to which salary for the month of April 2008 was paid to Kundan Kumar while salary for the month of May 2008 was paid in advance. In the cross examination, the witness stated that the day book had been started afresh w.e.f. 1.4.2008 i.e. the new financial year, as the previous book was closed down on 31.3.2008. It is not understandable as to why the books prior to 1.4.2008 were not produced and why the salary for the month of May 2008 was paid in advance. Nothing was shown that any salary was earlier paid in advance or paid at all. The accident had occurred on 21.5.2008 and only that part was covered. Counsel for the claimants argued that licence for the previous year was produced on record and it should be, therefore, presumed that the same continued in the following year as well. This argument is absolutely unacceptable. There was only a copy of certificate from the Deputy Excise and Taxation Commissioner, Ambala

to show that Kundal Lal was the liquor licensee for the year 2007-2008 but the document was not proved as per law nor was it exhibited.

7. Be that as it may, the contention of the Insurance Company that the income of the deceased should be assessed as commensurate to that of a labourer, would still not be holding good because if the deceased was a liquor licensee earlier or had been working with Jai Narain, then even if the salary may not have been proved through cogent evidence, at least it is inferable that he was not earning less than Rs.10,000/- per month from all sources. Therefore, the result would be that the income was rightly assessed by the Tribunal and no change is warranted in that.

8. Coming to the quantum, counsel for the claimants i.e. the appellants in appeal No.1127, argued that the income of the deceased was assessed correctly by the Tribunal but the amount awarded towards loss of consortium was very much on the lower side. He submitted that though in the grounds of appeal, it was pleaded that the income of the deceased was more than Rs.50,000/- per month as per evidence available on record, he did not press the point. Counsel for the Insurance Company did not object much to enhancing the amount of consortium as per the latest view taken by the Supreme Court in many cases. It is, therefore, ordered that consortium to the widow shall stand enhanced from Rs.5000/- to Rs.1,00,000/-. The total amount of compensation would, therefore, come to Rs.15,50,000/-.

9. The total compensation of Rs.15,50,000/- would, therefore, be payable to the claimants but the liability of the Insurance Company shall be to the extent of half of that and the Company would be liable to pay 50% of the amount with interest.

10. As regards the interest part, counsel for the Insurance Company argued that the same is now being granted at the rate of 6% per annum whereas it was granted by the Tribunal at the rate of 7.5% per annum. The rate of interest is also not being disturbed as it was not on the higher side. However, the enhanced amount of Rs.95,000/- shall be payable at the rate of 6% per annum.

11. The Insurance Company had deposited the amount of the award under a direction of this Court and it is, therefore, now ordered that after calculating the amount to be paid by the Insurance Company to the extent of 50% with interest, whatever amount in excess stands paid by the Company, shall be refunded in FAO No.3864 of 2010 filed by the Insurance Company.

(NAVITA SINGH)
JUDGE

13.02.2015
Ishwar

Whether to be referred to reporter: Yes