IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : May 05, 2015

1. FAO No. 3781 of 2011

   Darshan Singh vs Ashok Kumar and others

2. FAO No.6210 of 2011 and
   Cross Objection No.31 CII of 2012

   General Manager, Uttrakhand State Transport Corpn versus

   Manjeet Kaur and others.

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CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Jitender Chahal, Advocate
for the appellant in FAO No.3781 of 2011

Mr. S.K Verma, Advocate
for the appellant in FAO No.6210 of 2011.

Mr. RS Budhwar, Advocate
for the Cross Objectors.

Mr. Suvir Diwan, Advocate
for the respondent-Insurance Company.

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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AJAY TEWARI, J (Oral)

This order shall dispose of FAO Nos.3781 and 6210 of 2011 as well as Cross Objections No.31 CII of 2012, as they arise from the same Award of the Tribunal.

Brief facts are that on 24.11.2007, Darshan Singh, Balbir Singh, Darshan Singh, Harmel Singh and Gurbaksh Singh @ Bhola Singh (since deceased) left Kapal Mochan Fair in a tractor trolley, being driven by Darshan Singh, for their respective villages in the State of Punjab, and at about 7.30 pm, when they reached in the area of village Prithvi Ka Majra, District Yamuna Nagar, the offending bus, being driven by Ashok Kumar, hit the tractor trolley from opposite side, as a result of which all the occupants of the tractor trolley sustained injuries and Gurbaksh Singh @ Bhola succumbed to his injuries.

FAO No.3781 of 2011 has been filed by the injured-claimant Darshan Singh for enhancement of compensation, FAO No.6210 of 2011 has been filed by the owner of the offending vehicle against the Award of the Tribunal, and the Cross Objections have been filed by the claimants of deceased Gurbaksh Singh @ Bhola for enhancement of compensation.

The Tribunal held the driver of the offending vehicle responsible for causing the accident. The Tribunal awarded a sum of ₹ 50,000/- towards expenses for medical treatment and ₹30,000/- towards special diet, attendant charges, loss of earnings and pain and sufferings etc to injured-Darshan Singh.

Counsel for the respondent states that the appellants/claimants are not entitled to compensation as they were gratuitous passengers. I am afraid this argument does not hold water. The appellants/claimants were not gratuitous passengers as regards the offending vehicle.

As regards the deceased Gurbaksh Singh @ Bhola, the Tribunal assessed the monthly income as ₹ 5,000/- and after deducting 1/3rd as personal expenses and applying the multiplier of 13, assessed the compensation of ₹ 5,20,000/-. Besides this, a sum of ₹ 20,000/- was awarded towards transportation expenses, funeral expenses, loss of estate and loss of consortium. Both in the injury case as well as in the death case, driver and the owner of the offending vehicle were held jointly and severally to pay the compensation.

FAO No.3781 of 2011

Counsel for the appellant-injured has argued that the appellant remained in hospital from 25.11.2007 to 1.12.2007 and the amount of ₹30,000/- awarded under the heads of special diet, attendant charges, loss of earnings and pain and sufferings is grossly inadequate.

Counsel for the Insurance Company has, however, countered this by arguing that as per the medical record, there was no permanent disability and the appellant suffered only lacerated wounds and in these circumstances, the amount of ₹ 30,000/- cannot be held to be inadequate especially since the Tribunal has also granted interest @ 9% p.a.

I find weight in the argument of counsel for the respondent and consequently, dismiss this appeal.

C.M No.24223 CII of 2011 & F.A.O No.6210 of 2011

C.M No.24223 CII of 2011

For the reasons recorded, this application is allowed and delay of 211 days in filing the appeal is condoned.

FAO No.6210 of 2011

Counsel for the appellant-owner has relied upon PRTC vs National Insurance Company Limited, 2013(10) SCC 217 to contend that in the present case also, the Insurance Company could not have been completely absolved on the ground that the licence was fake.

Counsel for the Insurance Company is not in a position to dispute this argument.

Counsel for the appellant has further argued that the second ground taken by the Tribunal to absolve the Insurance Company is also not sustainable in law. As per him, it is not a case where there was no permit but the regular bus had broken down enroute and the present was a bus being plied as an alternative, and in the circumstances, even on this ground the Insurance Company could not have been absolved. He has relied upon National Insurance Co vs Rajinder Giri, 2012 RCR (Civil) 183.

These factual assertions have not been denied by counsel for the Insurance Company. Consequently, I have no hesitation in holding that the Tribunal erred in absolving the Insurance Company. Resultantly, this appeal is allowed and the finding of the Tribunal regarding absolving the Insurance Company is set aside.

Cross Objections No.31 CII of 2012

Counsel for the Cross Objectors has argued that nothing has been awarded on account of future prospects.

I agree with the counsel and award 30% as future prospects.

Counsel for the Cross Objectors has further argued that only a sum of ₹ 20,000/- has been awarded under conventional heads.

I find that this is indeed so and award a sum of ₹ 2 lacs to the widow towards loss of love and affection and consortium, ₹ 1 lac to the daughter and ₹ 50,000/- to the son of the deceased towards loss of love and affection. It is made clear that the apart from the amounts awarded in favour of the claimants individually, the entire enhanced amount/s shall fall to the share of the widow, out of which 50% shall be paid in cash and the remaining shall be put in a fixed deposit for three years.

Cross Objections stands disposed of in the above terms.

(AJAY TEWARI)
JUDGE

May 05 , 2015
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