IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5163 of 2012 (O&M)
Date of decision: 11.08.2015.

National Insurance Company

... Appellant

versus

Umed Singh and others

.... Respondents

2. FAO No. 3429 of 2012 (O&M)

Umed Singh and another

... Appellants

versus

Mehar Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.C. Gupta, Advocate for the appellant.

Mr. Pankaj Middha, Advocate for respondent Nos. 1 and 2.

K.Kannan, J.

CM No. 22991-CII of 2012

For the reasons mentioned in the application, duly supported by an affidavit, delay of 105 days in filing the appeal is condoned.

CM is disposed of.

Main Case

Both the appeal relates to the same accident and death of male aged 23 years, who died in a motor accident dated 12.04.2007. He was said to be an agricultural labour. The Court took the income @ Rs. 3,000/- applied a deduction of 1/ ½ and applied a multiplier of 13 and determined a total compensation of Rs. 2, 94,000/-. The Insurance Company took a plea that the driver did not have a valid driving license. The driver and the owner were served who did not come to the Court to defend themselves. The Insurance Company sought to rely on evidence of RW/1 Vijay kumar who brought proof of the fact that a criminal case had been registered for driving without driving licence. The Court closed the evidence of the insurer by order dated 31.01.2012 and proceeded to assess the award of Rs. 2, 94,000/- and made the Insurance Company to pay the amount.

The Insurance Company is in appeal in FAO No. 5163 of 2012 against the liability cast on the insurer to point out to the fact that when the owner and the driver failed to turn up in the Court to defend themselves and when there was proof of prosecution against the driver, the Insurance Company should have been atleast given the liberty to recover the amount after payment. The claimants have preferred an appeal in FAO No. 3429 of 2012 seeking for enhancement of compensation. The counsel would argue that the Court ought to have provided for a prospect of increase of salary over a period of time and must have applied a multiplier suitable to the age of the deceased. He was also seeking an assessment of Rs. 1,00,000/- for the loss of companionship of spouse and Rs. 25,000/- for funeral expenses.

I would accede to the contention for increase and reassess the same by making provision for applying of a multiplier of 18. I will also provide for Rs.1,00,000/- for loss of companionship of spouse and provide for Rs. 25,000/- towards funeral expenses and retain Rs. 10,000/- granted for loss to estate. I am not going to make any provision for prospect of happiness, for, happiness died with the person and there is no legal acceptable ground as 'loss of happiness'. That shall taken care of for the loss of love and affection. The total compensation is Rs. 6,21,000/- The Insurance Company ought to have been provided with the right of recovery after being made to shoulder the liability in the manner canvassed by the counsel appearing for the insurer for violation of terms of policy by its owner in entrusting the vehicle to a driver who had not have a valid and effective driving licence on the date of the accident. I will provide for the right of recovery after satisfying the award.

The appeal by the claimant is allowed to provide for a compensation of Rs. 6,21,000/- with interest @ 9% for the additional amount over the amount already assessed from the date of the petition till the date of the payment recoverable against the insurer and the insurance company appeal in FAO No. 5163 of 2012 is also allowed in part to provide for right of recovery against the owner and driver of vehicle at the relevant time of the accident, after satisfying the award.

(K.KANNAN)
JUDGE

11.08.2015
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