IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3905 of 2013 (O&M)
Date of decision: 25.08.2015

Surjit Kaur

... Appellant

versus

Surjit and others

.... Respondents

2. FAO No. 6144 of 2012 (O&M)

Bajaj Allianz General Insurance Company Limited

... Appellant

versus

Surjit Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.G.S. Rai, Advocate for the appellant.

Ms. Harveen kaur, Advocate for respondent No.2

Mr. Nitin Mittal, Advocate, for
Mr. Subash Goyal, Advocate for respondent No.3.

K.Kannan, J.

The appeals are for enhancement of compensation and for determination of liability by the claimant and the Insurance Company respectively. The appeal by the Insurance Company is FAO No. 6144 of 2012 while the appeal by the claimant for enhancement is FAO No. 3905 of 2013.

It is a case of a goods vehicle involved in the accident and the driver had Light Motor Vehicle (in short 'LMV') licence to drive the scooter and LMV. The plea in defence was that the vehicle had been insured as a truck and being a transport vehicle as defined as under. Section 2 (47) for carrying goods there was a necessity under Section 3 of the Motor Vehicles Act (in short 'Act') to carry a transport vehicle endorsement. The licence did not admittedly have such an endorsement and the driver was not duly licensed. The Insurance Company, therefore pleaded for execution of liability in the manner contemplated by judgment of Supreme Court in New India Assurance Co., Shimla Vs. Kamla and others, 2001 4 SCC 342. The trial Court rejected the plea by the Insurance Company by finding that the vehicle which was involved in the accident was LMV being less than 7500 kgms in the manner defined under Section 2(2) of the Act and the licence, therefore was sufficient to protect the insured from obtaining the full indemnity. The Insurance Company is in appeal against the judgment while the claimant would contend that her son was a Mason earning about Rs. 15,000/- per month. He was only 31 years of age and the Tribunal was taking an income merely @ Rs. 3,000/- and determining a compensation of Rs. 2,75,000/- by applying a multiplier of 15.

On the issue of liability, although the vehicle was LMV, in the manner of categorisation of what would qualify as a transport vehicle, it is possible that even LMV obtains to such a category if the vehicle was used for transporting goods and insured as such. The definitions of various categories mentioned in the Act are not mutually exclusive. There could be several areas of overlapping. It was in this context that the Supreme Court is deciding a case of LMV which was an auto-rickshaw which was used to transport passengers per hire. The driver had LMV licence and the issue for consideration was whether it was sufficient to cover the liability of the owner. The Supreme Court held in New India Insurance Vs. Challa Bharathamma, JT 2007 (4) SC 519, that there was a need to secure the transport vehicle endorsement and permit, therefore, if the owner had not secured such requirement as mandated under Section 3 read with Section 66, the owner cannot obtain a fully indemnity in the light of the law laid down. The full indemnity provided for the owner is not supportable and therefore the order of the Tribunal would required to be modified to that extent to make liable the Insurance Company for the award but at the same time provide for a right of recovery against the owner in the manner provided by the Supreme Court in National Insurance Company Limited Vs. Swaran Singh and others, 2004 3 SCC 297 and New India Assurance Co., Shimla Vs. Kamla and others, 2001 4 SCC 342. The appeal by the Insurance Company in FAO No. 6144 of 2012 is allowed to the above extent.

As regards the claim for enhancement, the evidence was that he was earning about Rs. 15,000/- per month. Considering the fact that he was said to be a Mason aged about 31 years and claimant is a mother, I would take the overall income of what he would have earned as Rs. 3,500/- and provide for 50% deduction and apply a multiplier of 16. I will also provide for Rs. 1,00,000/- as loss of love and affection for the mother in the manner provided by the Supreme Court in Munna Lal Jain and another Vs. Vipin Kumar Sharma, 2015 6 SCC 347 and provide for a conventional heads for loss to estate and funeral expenses in the manner provided in Rajesh and others Vs. Rajbir Singh and others, 2013 (9) SCC 54. The various heads of compensation will be tabulated as;

Fatal	Date of accident	10.11.2008	
Age	31		
Occupation/ Income	Labourer/Mason	3,000/-	
Claimant	Mother		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income	3,000/-	3,500/-
2.	Add, % of increase, 30%/50%		3,500/-
3.	Deduction, 1/2		1,750/-
4.	Multiplicand		21,000/-
5.	Multiplier	15	16
6.	Loss of dependence		3,36,000/-
7.	Medical Expenses		
8.	Loss of Consortium		
9.	Loss of love and affection		1,00,000/-
10.	Loss to estate		10,000/-
11.	Funeral Expenses		25,000/-
	Total	2,75,000/-	4,71,000/-

The total compensation would be Rs. 4,71,000/-. The additional amount of the compensation shall also attract interest @ 9% from the date of the petition till the date of payment. The liability will be borne by the Insurance Company first before it applies for recovery at the execution against the owner of the vehicle. FAO 3905 of 2013 is allowed and the award stands modified to the above extent.

(K.KANNAN)
JUDGE

25.08.2015
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