391IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-90-CII-2014 in/and
FAO No. 126 of 1993
Decided on: 02.03.2016.

M/s New Deep Bus Services Pvt Ltd. ... Appellant

Versus

Dhan Kaur and others ... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Amandeep Saini, Advocate,
for the appellant.

Mr. Harinder Sharma, Advocate,
for respondents No. 2 to 7.

Mr. Lalit Garg, Advocate,
for the Insurance Company.

JITENDRA CHAUHAN.J.

This appeal is directed against the award dated 09.06.1992, passed by Motor Accidents Claims Tribunal, Faridkot (for short 'the Tribunal') vide which the compensation of Rs.1,08,000/- has been awarded to the claimants. The owner of the offending bus is in appeal before this Court challenging the liability to pay the compensation.

The brief facts of the case are that on 16.04.1989 Mukhtiar Chand was travelling in bus No. PAB3148 belonging to the appellant-respondent No.2 i.e. Deep Bus Service, Gidderbaha from Muktsar to village Gilzewala. The bus was being driven by Mander Singh. The electric wires had been laid over the road near the bus stand of village Gilzewala. Tin boxes meant for storing wheat had been loaded over the roof of the bus. When the bus stopped near the bus stand, said tin boxes came in contact with the electric wires resulting into electric shock due to which Mukhtiar Chand and two other bus passengers died on the spot while, many others received injuries. The legal representatives of deceased Mukhtiar Chand filed a claim application before the Tribunal. The Tribunal, vide impugned award, allowed a sum of Rs.1,08,000/- to the claimants as compensation. However, the liability to pay the amount of compensation was fastened upon the owner and driver of the offending vehicle.

The Insurance Company was exonerated from the liability on the ground that the vehicle in question had been purchased by the appellant prior to the accident from M/s Guru Teg Bahadur Transport Society Ltd, Suryawala, Head Office Gilzewala. The factum of transfer was not brought to the notice of the Insurance Company. The policy was not transferred in the name of the appellant. There was no contract between the appellant and the Insurance Company, therefore, the appellant i.e. the purchaser of the vehicle in question was held liable to make the payment.

On behalf of the appellant, i.e. the purchaser of the bus, it is contended that as per the Motor Vehicles Act, 1988, on purchase of a vehicle, there is a automatic transfer in the name of the vendee and the intimation qua transfer of the vehicle need not be given to the Insurance Company. It is further contended that as per Section 157 of the Motor Vehicles Act, 1988, there is a deemed transfer in favour of the vendee. This being so, the Tribunal has erred in fastening the liability upon the purchaser/appellant despite the fact that the vehicle was insured with the respondent No.3.

Per contra, it is contended by the learned counsel for the Insurance Company that the accident in question took place on 16.4.1989. The Motor Vehicles Act, 1988 came into force on 1.07.1989. Therefore, the provisions of the Motor Vehicles Act, 1988 are not applicable upon the present case. The present case has to be governed by the provisions of the Motor Vehicles Act, 1939. As per Section 103-A of the Old Act, notice regarding transfer of vehicle has to be given to the Insurance Company. The Insurance Company cannot be made liable to pay the amount unless it has been given intimation regarding the transfer of the vehicle. In support of the contention, reliance has been placed upon ***G.Govindan Vs. New India Assurance Company Ltd., (S.C.) 1999(2) R.C.R. (Civil) 489 and Rikhi Ram and another Vs. Smt. Sukhrania and others, Civil Appeal No.1578 of 1994, PLR Vol.CXXXIV (2003-2)1*** .

I have heard learned counsel for the parties and have gone through the record of the case.

In **Rikhi Ram case (supra),** Hon'ble the Supreme Court held that the transferee who is the third party in the contract cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. In the present case, admittedly, there was no compliance of Section 103-A of the Old Act. Intimation with regard to transfer of the vehicle was not given to the Insurance Company. In the absence of any contract between the Insurance Company and the vendee, no liability can be fastened upon the Insurance Company to make good the deficiency caused by the vendee. In other words, there was a contract of insurance between the vendor and the Insurance Company but the vendee being not a party to the contract cannot derive any benefit therefrom. This being so, this Court concurs with the view taken by the Tribunal and is of the opinion that the liability has been rightly fastened upon the owner of the offending bus. Consequently, the appeal filed by the owner is dismissed.

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The cross objections have been filed by the claimants seeking enhancement of the compensation.

The learned Tribunal has assessed the income of the deceased at Rs.900/- per month considering him to be a labourer. Deduction of 1/3rd was made. Multiplier of 15 was applied as the deceased was 40 years old at the time of accident.

It is contended by the learned counsel for the claimants that the income has been assessed on lower side. Keeping in view the size of the family of the deceased, deduction of 1/4th ought to have been made instead of 1/3rd. Nothing has been awarded on account of loss of consortium, love and affection and funeral expenses.

The minimum wages for an unskilled labourer in the year 1989 were Rs.825/- per month. The Tribunal has already taken the income of the deceased as Rs.900/- per month. Since the point of income has not been agitated by the owner/Insurance company, this Court upholds the income of the deceased as Rs.900/- per month. The number of dependants were five i.e. mother, widow and three minor children, so deduction of 1/4th is made from the income of the deceased towards personal expenses. The monthly loss of dependency comes to Rs.675/- (Rs.900--Rs.225). The multiplier of 15 was rightly applied by the Tribunal.

Thus, the loss of dependency come to Rs.1,21,500/- (675x12x15). A sum of Rs.1,00,000/- is awarded to the widow of the deceased on account of loss of consortium. Another sum of Rs.1,00,000/- is awarded to the children of the deceased in equal shares towards loss of love and affection. Rs. 10,000/- are awarded to the claimants for funeral expenses. Thus, the claimants are held entitled to claim a total compensation of Rs.3,31,500/-.

In view of the above, the claimant-appellants are held entitled to the enhanced compensation of Rs.2,23,500/-, as indicated above, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization.

In view of what has been observed above, the appeal filed by the owner is dismissed and the cross objections filed by the claimants are allowed in the manner indicated above.

02.03.2016 **(JITENDRA CHAUHAN)**
SN **JUDGE**