IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 851 of 2008 (O&M)
Date of decision: February 4, 2016

The Oriental Insurance Co. Ltd.

...Appellant

Versus

Smt. Kamla Devi and others

...Respondents

(2) FAO No. 3101 of 2008 (O&M)

Smt. Kamla Devi and others

...Appellants

Versus

Karishma and others

...Respondents.

ORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Vandana Malhotra, Advocate,
for the Oriental Insurance Company Ltd.

Mr. Shubham Kaushik, Advocate,
for the claimants.

K. KANNAN, J. (Oral)

1. Both the appeals are connected and address the issue of involvement of the vehicle to make insurer liable for the alleged negligence in driving of the insured vehicle and on the issue of quantum of compensation as assessed. FAO No. 851 of 2008 is the appeal by the insurer and the FAO No. 3101 of 2008 is the appeal by the claimants seeking for enhancement.

2. The accident resulting in admission of the deceased at the hospital took place on 26.7.2002. The medico legal report, which was the 1st injury after the accident recorded the fact that he had been admitted at

4.30 pm and he had head injury. The patient had become unconscious and was irritable. Further investigation was directed and the doctor had recorded the probable time of injury to be less than six hours. The evidence available through PW1 Dr. V.K. Gupta showed that the patient was admitted in his hospital at V.K. Neurocare and Trauma Research Hospital Model Town, Hisar and he had been diagnosed to be a case of head injury and discharged on 3.8.2002 in a good condition. The doctor had also given evidence that the patient had a past history of epilepsy for the last 4-5 years. The doubt of the accident was cast by the insurer by pointing to the fact that the FIR was lodged on 3.8.2002 that is nearly 10 days after the accident and it also recorded the time of accident at 6 p.m. If the MLR recorded the injury at 4.30 pm, the accident could not have been at 6 pm in the manner urged by the claimants. The MLR recorded the possible accident as the involvement of a scooter but the FIR stated the vehicle involved to be a moped. However, there was oral evidence brought before the Tribunal through a person claiming to be an eye witness that the accident did take place involvingi the insured's vehicle. The driver-cum-owner was not examined at the trial.

3. Learned counsel for the claimants points out that the criminal court has also landed in conviction. Since the driver was juvenile and the order passed by the Juvenile Justice Board imposed him merely a fine of Rs. 1,000/-. I will not make much of the minor variations in reference to the time of accident or the discrepancy about the nature of vehicle as a scooter or a moped. Both of them are two wheelers and the expressions are mutually exchangeable. I confirm the finding that the insured vehicle was involved in the accident.

4. The most crucial issue in this case is whether the death that took place on 23.3.2003 was on account of the injuries sustained on 26.7.2002. The learned counsel for the insurer would point out to me that the deceased was actually working from 1.7.2002 itself upto 23.3.2003 except for brief periods of absence. An accountant from the bank was examined as RW3 gave the the dates when the deceased was actually marking his attendance at the bank. The counsel would argue that when he was discharged from the VK Hospital, he was discharged in a good condition and he being already suffering from epilepsy, there is no clear evidence that the death was on account of the injuries.

5. The post-mortem certificate which was filed in Court showed no more than the fact that the examination has been done and they sent the viscera for chemical examination. The final report was not available. The doctor, who carried out the post mortem, was, however, examined at the time of trial and he had given evidence to the effect that the cause of death was head injury and its related complications. The opinion which he reported to have drawn up had been marked as A16. The copy of the document itself is not available in the file since the original record has been destroyed.

6. A normal healthy person of 50 years who has no serious physical complications than episodes of epilepsy having suffered injury, was in and out hospital at various times. It is brought out on record that after he was discharged from the hospital on 3.8.2002, after the initial admission on 26.7.2002, he was again re-admitted on 3.8.2002 to 18.8.2002 in Hissar hospital. He had been re-admitted on 6.2.2003 till 10.2.2003 at A.N. Jindal hospital. During the interregnum period he had attended the

bank but within a few days after he was discharged on 10.2.2003, he was re-admitted on 20.2.20013 and till when he actually succumbed to the injuries on 23.3.2003. Epilepsy is not a killer disease. It is merely a physical condition arising out of the certain malfunction of the brain. His past history of epilepsy itself was not stated to be the cause of death. The Tribunal went by what the expert said and there was nothing seriously wrong about the expert's evidence. If the port-mortem revealed that the person's body was otherwise healthy and the cause of death was not immediately recorded to await report of the viscera, the most proximate cause of death was surely elicited from the doctor who performed the post-mortem. PW12, who, was a Medical Officer at the General Hospital, Hisar, has given a report and justified his decision as a death arising out of the head injury and the complications arising therefrom. The frequent hospitalization and treatment by various hospitals, between the date of accident on 26.7.2002 till his death on 23.2.2003 are further indications of the fact that he was never fully recovered, although he never allowed his illness to come on his way by attending to work. I cannot take the argument from the insurance company that since he was working during the various intervals, his death cannot be attributed to the injuries. It will be a dangerous inference to make against the medical evidence which was brought before the Tribunal. Therefore, I confirm the finding already recorded that the death was on account of the injuries sustained by the deceased.

7. That leaves us to consider only on the quantum for compensation. The claimants were widow and two sons, one aged 25 years and another aged 23 years. The elder son had a job given to him by way of

compassionate appointment on the death of his father. The second son was said to be engaged as an auto driver. The deceased was 52 years of age and his income was Rs. 13,311/-. Though the prospect of increase suggested by Sarla Verma Versus Delhi Transport Corporation 2009 (6) SCC 121 was never applied for the person above aged 50 years, there has been a consideration of such prospect in Rajesh and others Versus Rajbir and others 2013 (9) SCC 54 by a three member Bench providing for 15% increase when there was sure evidence of such prospect of increrase. Here was a bank employee whose employment terms was certain and I will reckon also as certain prospects of increase for rest of his career, deduct 10% as going towards tax, considering the fact that in the year 2002, the non-taxable income was 50,000/- and the rates of tax ranged between 5% to 20% upto 1,50,000/-. I will, therefore, find this to be a case for making a deviation from the normal rule and provide for 15% increase. Even if the sons were major, they were still young having acrossed 18 and both of them being dependent literally till one of them got employment after the death of his father and yet another being engaged in a modest activity of an auto rickshaw driver. I will not take that avocation as something which is a sufficient source for a person not to be looking for his father for dependence. In any event, for any number of dependents between 1 to 3, the deduction cannot be more $1/3^{rd}$ for personal expenses and I will apply for $1/3^{rd}$ deduction for the same towards personal expenses. The tribunal has allowed a multiplier of 8, which I will modify as 11, in terms of the judgment of the Sarla Verma's case (supra). The Tribunal has provided for Rs. 39,600/- towards medical bills, which I retain. I will provide for a loss of consortium at Rs. 1 lakh. Considering both the sons major, I will scale down through claim Rs. 25,000/- for the loss of guidance from the parent and enhance the funeral expenses.

Fatal Accident		***Date of accident***	
Age	52	26.7.2002	
Occupation	Bank official		
Claimants:	Widow and two sons		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1	Income	13311	13311
2	Add % of increase		13,776.885--- 15% less 10% tax
3	Deduction 1/3	1/3	9184.59
4	Multiplicand (annualized)		110215.08
5	Multiplier	8	11
6	Loss of dependence		12,12,365.88
7	Medical expenses	39600	39600
8	Loss of Consortium		1,00,000
9.	Loss of love and affection for children		50000
10	Loss to estate		5000
11	Funeral Expenses		25000
	Total	8,66,000	14,31,963.88 rounded off to 14,32,000

8. The total compensation payable shall be ₹ 14,32,000/- and the additional amount will also attract interest @7.5% from the date of the petition till the date of payment. The amount shall be disbursed in the ratio of 2:1:1 amongst the wife and sons.

9. The appeal of the claimants is allowed to the above extent and the appeal filed by the insurance company is dismissed.

February 4, 2016 **(K.KANNAN)**
prem **JUDGE**