**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Date of Decision : 15.02.2016

1. FAO No.6900-2010 (O&M)

Mohamed Irfan

.... Appellant

versus

National Insurance Company and others

.... Respondents

2. FAO No.4158-2011 (O&M)

Renu Bala and others

.... Appellants

versus

Mohammed Irfan and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Robin Dutt, Advocate
for the appellant in FAO-6900-2010.

Mr. Harish Bhardwaj, Advocate for
Mr. Namit Gautam, Advocate
for the appellants in FAO-4158-2011.

Mr. R.C.Kapoor, Advocate
for respondent No.1 in FAO-6900-2010 and
for respondent No.3 in FAO-4158-2011.

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1. Whether Reporters of local papers 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?

AJAY TEWARI, J.(ORAL)

These are two appeals. One appeal bearing FAO No.6900-2010 has been filed by the appellant-owner against the exoneration of the Insurance Company and the another one bearing FAO No.4158-2011 has been filed by the claimants seeking enhancement on the ground that the multiplier of 17 has been applied instead of 18. For the sake of convenience, the facts are being taken from FAO No.6900-2010.

As per case set up by the claimants, on 10.06.2006 Anu Malik-deceased was travelling in the truck No.UP-22-T-0039 from Jagadhri to Muradabad. On the night intervening 10^{th} and 11^{th} June, 2008 when the truck was passing through a street in the area of Mugalpura, Muradabad, it came in contact with an electric wire, as a result of which deceased sustained electric shock and died. They have claimed compensation to the tune of Rs.8,00,000/- as the deceased was running the business of supply of metal thereby, earning Rs.3,300/- per month. The tribunal assessed the monthly income at Rs.3000/-, $1/3^{rd}$ of the income of the deceased has been deducted on account of his personal expenses and a multiplier of 17 has been applied. The Tribunal further held that the deceased was travelling as a gratuitous passenger.

In this connection, learned counsel for the appellant-owner has argued that one of the persons who was travelling in the Truck, PW-2 Ashok Kumar, has stated that the deceased was dealing in metal dust and was travelling in the truck along with him as owner of the goods and the other persons were who had purchased the material. But he was not cross-examined on this issue by the counsel for the Insurance Company and, therefore, it had to be held that the deceased was not a gratuitous passenger.

Learned counsel for the respondent No.1-Insurance Company has vehemently defended the order by arguing that firstly in the claim petition no plea was taken that the deceased was travelling in the truck as the owner of any material and even in the written statement filed by the appellant owner this fact was not mentioned at all that the deceased was travelling as the owner. He has further argued that neither any bilty was placed on the record nor was there any toll tax receipt which was placed on record by the appellant-owner and in these circumstances no fault could be found with the finding that the deceased was a gratuitous passenger. To support his argument, he has relied upon an order passed by the High Court of Himachal Pradesh, Shimla in FAO-204-2005 decided on 17.12.2009 titled as ***"Oriental Insurance Company Limited Vs. Meera and others"*** wherein it was held as follows :-

> *"5. As mentioned above, in the claim petition there was no allegation that the deceased had hired the vehicle in question or that he was travelling in the same as owner of the goods. No doubt, it is stated that the deceased was carrying some domestic goods in the vehicle but neither there is any description of any goods nor it is mentioned that the vehicle was hired. Insurance company had taken a specific stand that the deceased was an unauthorised passenger. The claimant Meera while appearing in the witness-box has not stated a word as to what goods were being carried in the vehicle or that deceased had hired the vehicle in question. No suggestion was put to her on behalf of the owner-cum-driver that deceased had hired the vehicle. In any event this witness could not have stated anything in this regard since she was not present when*

the deceased boarded the vehicle or when the accident occurred.

13. In the present case, on the basis of the evidence on record, it is apparent that the deceased was not travelling as owner of the goods but was merely a gratuitous passenger. Not a word has been stated by any witness that he had hired the vehicle. It is thus obvious that he was only a gratuitous passenger and even assuming that he had also taken some goods he could not be said to be travelling as owner of the goods. To be covered under the terms of the Act some evidence must be led to show that the deceased had hired the goods vehicle for transportation of his goods."

Both these arguments are not applicable in the present case as the witness had stated that he had hired the vehicle for carrying goods and was travelling as the owner. In this connection, these finding are not applicable in the present case since as mentioned above no question was put to the witness with regard to his statement that he was travelling as the owner of the goods in the truck. Further in my opinion, the crucial determinant is not what was or was not pleaded. It has been repeatedly held that the strict rules of civil pleadings are not applicable to claim petitions and in this context, to my mind what becomes the determinant is the omission of the learned counsel for the respondent No.1-Insurance Company to put any question to the witness about his statement that the deceased was travelling as a owner of the goods. Once he was not cross-examined on this statement it has to be held that the Insurance Company did not dispute this. Consequently the finding of the Court below that the insurance company had to be absolved is set aside.

Coming to the appeal filed by the claimants, the only argument raised by the learned counsel for the claimants-respondents No.3 to 6 is that as per Schedule-II the multiplier in this case had to be 18 and not 17.

Learned counsel for the Insurance company has fairly accepted this.

In the circumstances, it is held that the multiplier of 18 should be applied.

Consequently, both the appeals are allowed in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

February 15, 2016
Pooja Sharma-I