IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

FAO No.4547 of 2012
Date of decision: 24.02.2016

Iffco Tokio General Insurance Company Limited ... Appellant

Versus

Smt. Sharda and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr. Ajay Singla, Advocate
for the appellant.

Mr. Nitin Mittal, Advocate
for respondents No.1 to 5.

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Amol Rattan Singh, J.

The Insurance Company of motorcycle bearing registration No.HR-28-A-3512, which was involved in an accident on 14.01.2010, in which Rattan Lal, husband of respondent No.1 and father of respondents No.2 to 4, unfortunately lost his life, is in appeal against the Award of the learned Motor Accident Claims Tribunal, Nuh, dated 03.04.2012. By the said Award, a sum of Rs.21,29,235/- has been awarded to the said respondents, by way of compensation.

2. As per the facts given in the Award, and as argued by the learned counsel for the appellant, the deceased was going on his motorcycle

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to Sohna and when he was half a kilometer from village Malab, the "offending motorcycle" bearing registration No.HR-28A-3512, is stated to have come from behind, driven rashly and negligently by respondent No.7, which hit the motorcycle of the deceased, resulting in the deceased falling down and receiving injuries, due to which he unfortunately died on the spot itself.

It was claimed that the deceased Rattan Lal was working as a Mali-cum-Chowkidar in the Forest Department, earning Rs.10,441/- per month and that the claimants were all wholly dependent upon that earning.

3. Issues on negligence of respondent No.7 and, if proved, the compensation to be paid to the claimants, and whether respondent No.7 was holding a valid driving licence or not, were framed by the learned Tribunal.

On the issue of negligence, the Tribunal found that an FIR had been lodged against respondent No.2 on the same day that the accident took place, by one Tej Ram, who however, did not given the name of the person driving the motorcycle that hit Rattan Lals' motorcycle and also did not given the registration number thereof.

The number of the motorcycle was found out, the next day on the statement of one Deep Chand, made under Section 161 Cr.P.C. to the police, after which the name of the driver thereof was found out, during investigation.

In the written statement filed by the present respondents No.6 and 7, i.e. the owner and driver respectively of the aforesaid motorcycle, it is noticed by the Tribunal that they did not deny the accident but, in fact, took a plea that it took place due to the rash and negligent driving of deceased Rattan Lal. Though the appellant Insurance Company (respondent

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No.3 before the Tribunal), stated that the written statement filed by the driver and owner of the vehicle was in collusion with the claimants, the said contention was repelled by the Tribunal, holding that simply because the complainant in the FIR could not note down the number of vehicle and the name of the driver thereof, did not mean that respondents No.1 and 2 were in collusion with the claimants.

Hence, on the issue of negligence, respondent No.7, Aas Mohd., was found guilty of driving the motorcycle insured by the present appellant in a negligent manner, leading to the accident and consequent death of Rattan Lal.

4. Having held as above, also by citing various authorities, the Tribunal went on to assess the compensation payable by the present appellant and respondents No.6 and 7.

The age of the deceased was found to be 37½ years at the time of his death and his gross salary was found to be Rs.10,441/- per month, to which Rs.5220/- was added by way of loss of future prospects of income and thereafter, a 1/4th deduction was made towards the personal expenses of the deceased, had he continued to live.

It was also found as a matter of fact, that the deceased was not subject to any income tax at the time of his death, his annual salary being slightly above Rs.1,25,000/- (Rs.1,25,292/-).

5. After deduction towards personal expenses and applying a multiplier of 15, the Tribunal came to the conclusion that the loss of dependent income, including loss of future prospects of income to the claimants, was Rs.21,14,235/-.

Rs.5000/- was awarded towards funeral expenses, another

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Rs.5000/- towards loss of estate and yet another Rs.5000/- towards loss of consortium to respondent No.1 (widow of the deceased).

Thus, the total compensation awarded was Rs.21,29,235/-, as already noticed.

To the aforesaid sum, interest @ 6% per annum was ordered to be paid, running from the date of filing of the claim petition, till the date of realization thereof and the three respondents before the Tribunal, i.e. the present appellant and respondents No.6 and 7 herein, were held jointly and severally liable to discharge the liability.

6. It is to be noticed that before the Tribunal, a specific plea was taken that the deceased being a Haryana Government employee, his widow continued to receive the salary last drawn by him, and would continue to do so for a period of 12 years after the death of Rattan Lal. Hence, it was argued that there was actually no loss of income to the claimants and therefore also no question of loss of future prospects of income. However, relying upon a judgment of this Court, dated 29.09.2010, in FAO No.3432 of 2009 (New India Assurance Company v. Smt. Santosh and others, and nine connected appeals), the learned Tribunal held that the salary drawn by the widow of the deceased was by way of compassionate assistance granted by the employer, i.e. the Government of Haryana, which would have no bearing on the liability to be discharged by the driver of the vehicle that caused the accident leading to the death of the deceased and, vicariously, by the owner and insurer of the said vehicle.

Consequently, it was held that the compensation by way of compassionate assistance, as was being paid by the employer of the deceased, would not be deductible from the compensation to be paid by the

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driver, owner and insurer of the vehicle that 'caused' the motor accident.

7. Before this Court, learned counsel for the appellant submits that firstly, the issue of negligence has been erroneously dealt with by the learned Motor Accident Claims Tribunal (in short “the Tribunal”), inasmuch as, the complainant who had lodged the FIR (Tej Ram), had not stepped into the witness box to depose as an eye witness of the accident. Hence, he submits that with no eye witness having deposed to the effect that respondent No.2 (Aas Mohd.) was negligent in driving the offending vehicle, i.e. motorcycle bearing registration no.HR-28-A-3512, the Tribunal could not have concluded that it was the negligence of respondent No.2 that caused the accident.

Further, neither respondent No.1 nor respondent 2, stepped into the witness box to depose in favour of the stand taken by them in their written statement.

As a matter of fact, learned counsel for the appellant submits that subsequently they had been proceeded against ex parte.

Learned counsel next, re-iterated, that since the deceased, Rattan Lal, was an employee of the Haryana Government, being a Mali-cum-Chowkidar in the Forest Department, his widow, i.e. claimant No.1 (Smt Sharda), was entitled under the Compassionate Appointment Rules of the Haryana Government, to receive his full salary, as last drawn by him on the date of his death, up to the date that he would have superannuated from service. As such, learned counsel submits that the amount of the salary being drawn by respondent No.1 should have been deducted while calculating the compensation to be paid under the head of loss of income to the respondents.

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8. Per contra, learned counsel for respondents No.1 to 4 has placed reliance upon a judgment of the Supreme Court in **Vimal Kanwar and others vs. Kishore Dan and others (2013)7 SCC 476,** wherein this issue was specifically dealt with by the Apex Court.

It was held as follows:-

> "20. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction.
>
> "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statue occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee die in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

Thereafter, the Supreme Court went on to calculate the compensation payable under the head of loss of income to the claimants in that lis, by taking the loss of future prospects of income to be 100% of the income actually earned by the deceased at the time of his death.

9. Having heard learned counsel for the parties and having considered the Award passed by the Tribunal, I am not able to agree with the submission made by the learned counsel for the appellant.

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Firstly, on the issue of negligence, I find the reasoning of the Tribunal, as already detailed earlier, to be a perfectly plausible one, inasmuch as, simply because the complainant in the FIR did not manage to read the registration number of the motorcycle driven by respondent No.7 and obviously did not know the name of the person driving the vehicle on the road, that alone would not be sufficient to hold that the accident of deceased actually did not take place with the vehicle driven by respondent No.7. This gets further strengthened by the fact that respondents No.6 and 7 did not deny the accident, though sought to fasten the blame on the deceased, in being negligent in driving his motorcycle.

No doubt, the possibility of connivance between the appellant and respondents No.6 and 7 cannot be entirely ruled out, in view of the fact that the said respondents, knowing that their motorcycle was insured, would also know that they would not have to eventually pay the compensation. However, simply on that possibility, with no counter complaint having been filed at any stage, even at the behest of the Insurance Company, the contention of learned counsel for the respondent-claimants, deserves acceptance, in my opinion, to hold that in these circumstances, no error can be found with the conclusion reached by the learned Tribunal, in finding negligence attributable to respondent No.7 in driving his motorcycle, in a rash and negligent manner, leading to the motor accident and consequent death of deceased Rattan Lal.

10. As regards the compensation awarded, the salary certificate of the deceased was duly proved by an official from the Forest Department of the Government of Haryana testifying to that effect and as such, there is no error in the finding of fact, qua the quantum of salary, in any case.

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Though, in my opinion, the fact that the widow of the deceased, i.e. respondent No.1, would continue to be paid the last salary drawn by her late husband for a specific period, there is no actual income loss up to that extent; however, loss of future prospects of income, by way of increments that the deceased would have earned, the promotion he may possibly have earned and the consequent increase in salary, the benefit of pay revisions etc., have obviously been lost to the family. Thus, as regards the loss of future prospects of income, where the deceased was in a stable job with the Government, do need to be awarded to the claimants, in the opinion of this Court.

However, with the authoritative pronouncement by the hon'ble Supreme Court in *Vimal Kanwars' case* (supra) and the other judgments cited by the Tribunal, to the effect that the compassionate assistance given by an employer is on account of different parameters and would not absolve the liability of those responsible for paying compensation on account of the death of a person in motor vehicle accident, this Court is obviously bound by the ratio of the aforesaid judgment of the Supreme Court and consequently, the plea of learned counsel for the appellant, in that regard also, is rejected.

11. Further, in my opinion, on the ratio of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121, **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54 and *Vimal Kanwars' case* (supra), respondent No.1 and respondents No.2 and 3, i.e. the widow and children of the deceased also deserve higher compensation by way of loss of consortium, loss of love and affection to minor children and towards expenses incurred on the funeral and last rites

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of the deceased, this not being an appeal filed by the appellants, nothing further is said on that count.

Consequently, in view of what has been held hereinabove, finding no merit in the appeal, it is dismissed but with no order as to costs.

24.02.2016 **(AMOL RATTAN SINGH)**
vcgarg **JUDGE**

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