210.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6106 of 2012 (O&M)
Date of decision:25.01.2016

Bajaj Allianz General Insurance Company Limited ... Appellant

versus

Pappu Ram and others .... Respondents

II. <u>FAO No.6107 of 2012</u> (O&M)

Bajaj Allianz General Insurance Company Limited ... Appellant

versus

Jasbir Kaur and others .... Respondents

III. <u>FAO No.6244 of 2012</u> (O&M)

Jasbir Kaur and another ... Appellants

versus

Yaseen and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Subhash Goyal, Advocate,
for the appellant in FAO No.6106 and 6107 of 2012 and
for respondent No.3 in FAO No.6244 of 2012.

Mr. Abhishek Arora, Advocate,
for the appellants in FAO No.6244 of 2012 and
for respondents 1 to 3 in FAO No.6107 of 2012.

<u>K.Kannan, J</u>. *(Oral)*

1. All the three appeals arise out of the same accident that took place on 11.06.2010. In the accident, one person was injured and another had died. The Insurance Company is in appeal in FAO No.6106 of 2012 being aggrieved about the quantum and liability cast, while the appeal by the representatives of the deceased is in FAO No.6244 of 2012 and by the insurer in relation to the same claim in FAO No.6107 of 2012.

2. On an issue of liability, the contention was that the driver and the owner had been served with notices by the insurer demanding the production of the driving licence and the permit. The copies of the notices issued by the insurer and the notice issued through counsel were filed as Exs.R1 to R3 and the registration receipts were filed as Exs.R4 and R5. Neither the driver nor the owner appeared in court to furnish any particular of the driving licence or the permit. A person as not having a driving licence is a negative evidence and the insurer must be taken as having done what was possible to discharge the onus of proof. If the owner and driver did not send a reply giving the particulars as demanded, I will make an inference that there had been a breach of the terms of policy enabling the insurer to plead that the owner and driver are not entitled to indemnity for the award that is passed. The Tribunal was not justified in granting an award against the insurer without

providing for a right of recovery. The finding is set aside.

3. As regards the quantum, the medical records showed that he had two fractures of the lower limb and the Tribunal has awarded ₹80,000/- under various heads taking the injury to have resulted in loss of earning, pain and suffering and loss of amenities. The amount though relatively slightly on the higher side, I will not find it to be so seriously off the mark to make a judicial intervention. The quantum of compensation as assessed for the injuries which is the subject of appeal in FAO No.6106 of 2012 is retained.

4. The deceased was a conductor who was taken by the Tribunal at 35 years of age. The postmortem certificate had given the age as 36 years and the claimant had a different version of being he was even 30 years of age. In the absence of birth certificate, I take the age as given in the postmortem certificate as relevant, take the income as already assessed by the Tribunal at ₹3,000/-, make the provision for 50% increase and also award compensation for loss of love and affection and for loss of consortium in the manner provided in ***Rajesh Versus Rajbir Singh-2013(9) SCC 54***. The various heads of claims are tabulated as under:-

Accident	11.06.2010		
Age	36		
Occupation	Conductor		
Claimants	Wife, mother and child		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1.	Income	3,000	3,000

2.	Add,% of increase 30%/50%		4,500
3.	Deduction ½, 1/3, ¼, 1/5	1/3	3,000
4.	Multiplicand		36,000
5.	Multiplier		15
6.	Loss of dependence		5,40,000
7.	Medical expenses		
8.	Loss of consortium	5,000	1,00,000
9.	Loss of love and affection		1,50,000
10.	Loss to estate		5,000
11.	Funeral expenses	5,000	25,000
	Total	2,98,000	8,20,000

There shall be an award of ₹8,20,000/-. The amount in excess of what has been already awarded by the Tribunal will attract interest at 9% from the date of petition till date of payment. The initial liability will be on the Insurance Company. The appeal in FAO No.6244 of 2012 is allowed on the above terms.

5. Consistent with my finding that the owner and driver have not shown that there was any driving licence in spite of notice having been served on them, I will allow the benefit of recoveries for the insurer against the owner and driver. The awards are modified to that extent in all cases and the appeal in FAO No.6106 of 2012 is partly allowed to that extent. The appeal in FAO No.6107 of 2012 is partly allowed to the insurer to allow for a right of recovery against the owner and driver after satisfying the award for the representatives of the deceased in the manner indicated above.

(K.KANNAN)
JUDGE

25.01.2016
sanjeev