IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 1370 of 2013(O&M)
Date of decision: 15.03.2016

Sona Kumari and others

... Appellants

versus

Parvansh Yadav and others

.... Respondents

2. FAO 1522 of 2013(O&M)

Ram Narayan Chaudhary @ Ramayan Chaudhary

... Appellant

versus

Sona Kumari and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vivek Suri, Advocate, for the appellants.

Mr. D.C. Mittal, Advocate for respondent No.3.

K.Kannan, J. (ORAL)

The appeals are at the instance of the owner and the claimant. The appeal by the claimants in FAO No. 1370 of 2013 is for enhancement of the claim while the appeal in FAO No. 1522 of 2013 is at the instance of the owner who has been made liable and found not to be entitled to indemnity by virtue of the fact that the deceased was a traveller on a mudguard of the tractor. The policy of insurance does not cover the risk to a passenger in a tractor. The deceased was taken to be 32 years of age as per the postmortem certificate. Even in the absence of any other proof and taking the income at Rs. 3,500/- and making a further provision of prospect of increase, the average income was taken as Rs. 4,550/-and the Tribunal assessed the compensation of Rs.5,76,120/-

The claimants objection to the award is that it is not adequate and the Tribunal does not provide for a further prospect of increase and that the amount taken was even less than what is received as minimum wages as per the Government guidelines. The Tribunal had applied for a multiplier of 15 when according to the claimants it should have been at least 16.The Tribunal has taken the average income of an able bodied person as Rs. 4,550/-which I think is appropriate and I will make no modification of the same. Considering the fact there were widow, daughter and son aged 18 and 16 respectively, I will apply deduction of 1/3rd to personal expenses and rework the compensation and tabulate the same as under:

Fatal	Date of accident	04.02.2009	
Age			
Occupation			
Claimants			
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income		4,550/-
2.	Add, % of increase, 30%/50%		
3.	Deduction, 1/3,		3,033.33

4.	Multiplicand		36,400/-
5.	Multiplier		16
6.	Loss of dependence		5,82,400/-
7.	Medical Expenses		
8.	Loss of Consortium		1,00,000/-
9.	Loss of love and affection		1,00,000/-
10.	Loss to estate		2,500/-
11.	Funeral Expenses		10,000/-
	Total		7,94,900/-

The total compensation will be Rs. 7,94,900/-. The additional compensation shall attract interest of 7.5% from the date of the petition till the date of payment.

As regards the liability, the contention of the owner is that this Court has held in United India Insurance Company Limited Vs. Sunita Devi and others, FAO No. 2656 of 2007 decided on 12.08.2010 that even the owner will not be made liable. With the definite evidence available that he was unauthorized and did not have the concurrence of the owner, I had held the owner would not be liable. I am of the view that if the driver/employee has done an act which is tortious, law of vicarious liability shall normally make the owner also liable and I will not deviate from the application in such a rule. In this case, the liability cast on the owner has to be found valid and I will make no deviation from the same. The counsel for the owner however points out that this Court has also held in appeal filed by the Insurance Company pleading exoneration from the liability made insurance company liable under Section 140 of the Motor Vehicles Act to an extent of Rs. 50,000/- on no fault basis. Where the only issue arising was whether the petition could be dismissed, I have made the insurer liable for atleast Rs. 50,000/- so that the claim is not completely dismissed. In a situation where the owner is made liable on a finding that the policy of insurance will not cover the risk to a person travelling on a mudguard and that the owner would be vicariously liable, to make the insurer liable.

There is also an argument brought by the learned counsel that this Court has taken a view in <u>New India Assurance Co. Ltd. Vs. Smt. Tarawati and others, 1994 (2) CCC 485 (P&H)</u> that Insurance Company will not be made liable for a claim by the representatives of the person who is travelling on a tractor. This case addresses an issue of liability of the Insurance Company and this is consistent with the view which i have taken already. I cannot extend however this judgment to the principle that owner also will not be liable in the light of the reasoning adopted that owner will not be vicariously liable for the tortious wrong of his employee.

There is also an argument that the claim petition has been dismissed against the driver and consequently the appeal against the owner must also be dismissed. The liability is always joint and several and if the dismissal of the claim against the driver was not on merits, but was for failure to take steps to serve him, I will not find the same to avail to the benefit of the employer owner of the vehicle.

The appeal by the claimant in FAO No. 1370 of 2013 is allowed allowing for enhancement in the manner indicated above. The appeal filed by the owner against the liability cast on him is dismissed.

(K.KANNAN)
JUDGE

15.03.2016
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