IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2229 of 2014 (O&M)
Date of decision: 23.04.2016

Future Gen. India Insurance Co. Ltd.

... Appellant.

versus

Premwati and others

.... Respondents

2. FAO No. 4514 of 2014 (O&M)

Ajay Kumar

... Appellant.

versus

Future General India Insurance Co. Ltd. and others

.... Respondents

3. FAO No. 4515 of 2014 (O&M)

Ajay Kumar

... Appellant.

versus

Future General India Insurance Co. Ltd. and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

Mr. Kunal Dawar Advocate, for respondent No.3.

K.Kannan, J. (ORAL)

The appeal is by the Insurance Company on the issue of quantum and liability as assessed. The Tribunal has provided for right of recovery against the owner and driver for alleged violation of terms of policy. The owner is in appeal in FAO No. 4514 of 2014. The deceased was a male aged 26 years and the Tribunal assessed the compensation of Rs. 5,70,000/-. The Court has applied the multiplier of 9 to depend on the average of the age of the parent when the present dispensation as per the decision in Munna Lal Jain and another Vs.

Vipin Kumar Sharma and others, 2015 (6) SCC 347 is that the multiplier will depend on the age of the deceased. Even the compensation provided for loss of love and affection is modest and the amount of Rs. 5,70,000/- itself cannot be taken to be high to make intervention. That would leave for consideration only the matter of whether the right of recovery could have been ordered against the owner which is the subject of appeal in FAO No. 4514 of 2014. The owner gave evidence that he saw the driving licence said to have been issued at Farookabad and believed that licence to be true. It turned out in evidence that the driver produced yet another driving licence said to have been issued at Malwa. The court observed that there as no due diligence. The counsel for the insurer would argue that the driving licence at Farookabad was a fake driving licence and there was no due diligence on the part of the owner. According to him, the driver was not a resident of Farookabad and the owner must have sought for information as to why the driver had attempted to secure driving licence from Farookabad. I do not believe such an enquiry and it is the belief of the owner as declared by him at the trial that will be the deciding criterion for the consideration of issue of whether there was violation of terms of policy or not. I cannot find any particular reason that the owner must have known that the driver could have been secured the driving licence from Farookabad which was not his native place. It is possible for a person to secure the driving licence from any part of India. The finding that owner was not diligent in making an enquiry regarding the genuineness of the licence is against the law laid down by the Hon'ble Supreme Court in PEPSU Road Transport Corporation Vs. National Insurance Company 2013 (4) RCR (Civil) 273.

The right of recovery granted by the insurer against the insured is set aside. FAO No. 2229 of 2014 is dismissed and FAO No. 4514 of 2014 is allowed. The same issue also comes up for consideration in yet another appeal in FAO No. 4515 of 2014 which addresses a similar liability cast on the owner and the right of recovery granted by the insurer for the claim which is the subject of appeal in FAO No. 2229 of 2014. I will not detain FAO No. 4515 of 2014 only for disposal of FAO No. 2229 of 2014. Consistent with the finding which I have entered in the above appeal in FAO No. 4514 of 2014, I allow the appeal in FAO No. 4515 of 2014 as well.

(K.KANNAN)
JUDGE

23.04.2016
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