

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

Date of decision: 10.11.2016

1.

FAO No.4487 of 2014(O&M)

New India Assurance Co. Ltd.

....Appellant

VERSUS

Rukmini and others

.....Respondents

Present: Mr. R.C. Kapoor, Advocate for the appellant.

Mr. J.S. Saini, Advocate for respondents no.1 to 4.

Mr. Kanhiya Saini, Advocate and
Mr. Mavinder Singh Dalal, Advocate for respondent No.5.

Mr. Vishal Kashyap, AAG, Haryana.

2.

FAO No.9425 of 2014(O&M)

Smt. Rukmini and others

....Appellants

VERSUS

Bachan Singh and others

.....Respondents

Present: Mr. J.S. Saini, Advocate for the appellants.

Mr. M.S. Dalal, Advocate and
Mr. Kanhaiya Saini, Advocate for respondent no.1.

Mr. R.C. Kapoor, Advocate for respondent No.5.

Mr. Vishal Kashyap, AAG, Haryana.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.4487 and 9425 of 2014 as these have emerged out of the same award dated 21.04.2014 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') whereby compensation has been awarded in favour of Smt.

Rukmani and others in regard to death of Harmesh Kumar Sharma in a motor vehicular accident that took place on 01.08.2012. For the sake of convenience, facts are taken from FAO No.4487 of 2014.

The parties shall be referred to as the 'insurance company' and the 'claimants' in order to avoid inconvenience.

The Tribunal assessed monthly income of the deceased at Rs.22,518/-, allowed addition of 15% for future prospects, deducted 1/3rd for personal expenses, adopted a multiplier of 9 to compute loss of dependency to the tune of Rs.18,64,512/-. In addition, an amount of Rs.1,00,000/- for loss of consortium to the widow and Rs.25,000/- for transportation and funeral expenses was awarded, making total compensation to Rs.19,89,512/- payable only to the widow and mother of the deceased in the ratio of 80:20.

Counsel for the insurance company has assailed the award on three grounds. The first submission made by counsel is that as the occurrence admittedly happened in the workshop of Haryana Roadways, the accident did not take place at a public place defined in Section 2(34) of the Motor Vehicles Act, 1988 (in short 'the Act'), therefore, the provisions of Section 147 of the Act are not attracted to fasten liability upon the insurance company.

The second submission is that as the deceased was an employee of the Haryana Roadways, the insurer is not liable to pay compensation as the insurer has obligation to indemnify the insured only.

Counsel would urge that as the deceased was an employee of the Haryana Roadways and is entitled to benefit of compassionate assistance under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'the Rules'), the

amount payable under the said Rules is liable to be deducted from compensation, if any, assessed under the Act.

Counsel for the claimants, on the contrary, has supported the findings that the insurance company is liable to pay compensation. It is argued that no deduction in regard to compassionate assistance provided under the aforesaid Rules is permissible in the light of Division Bench judgment of this Court **Reliance General Insurance Company Ltd. Vs. Purnima and others**, 2014 ACJ 307. However, it is urged that compensation for loss of dependency as well as under conventional heads needs enhancement.

I have heard counsel for the parties, perused the paper-book and the records.

The Tribunal, by taking into consideration definition of a ‘public place’ under the Act and placing reliance upon judgment of the Kerala High Court **Alias Vs. E.M. Paul and others**, AIR 2004 Kerala 2014, held that plea of the insurance company is not tenable and it cannot escape its liability to pay compensation.

Section 2(34) defines ‘public place’ and says that “public place” means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

In the case at hand, place of accident is admittedly a workshop of Haryana Roadways. A Full Bench of the Bombay High Court in **Pandurang Chimaji Agale and another Vs. New India Life Insurance Co. Ltd. and others**, 1988 (64) Company Cases 837, by referring to definition of public place under the Act has held, quoted thus:-

“ The definition of “public place” under the Act is, therefore, wide enough to include any place which members of public use and to which they have a right of access. The right of access may be permissive, limited, restricted or regulated by oral or written permission, by tickets, passes or badges or on payment of fee. The use may be restricted generally or to particular purpose or purposes. What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation other purpose.

It is also necessary to bear in mind the distinction between the expression “right of access” and “access as of right”. The latter expression denotes a place where the members of public have a right of its use as members of public and as a matter of right, whether regulated, restricted or not. They cannot, however, be denied the said right except on legal grounds. On the other hand, where there is only a right of access, the owner of the place, if he happens to be a private owner, may deny the access to any member of the public on any ground which he chooses. In other words in the former case the right of the members of the public to use the place is restricted compared to their right to use in the latter case. The definition under the Act uses the expression “right of access” as pointed out earlier. What is, therefore, significant to note is that under the present definition even a place the right to use of which is restricted is a public place. Once this is borne in mind much of the controversy raised before us around the correct meaning of the expression “public place” loses its edge.

xxx xxx xxx

The legislature was concerned not so much with the nature of the place where the vehicle causes the accident as where it was likely to do so. Hence all places where the members of public and/or their property are likely to come in contact with the vehicles can legitimately be said to be in its view when the legislature made the relevant provisions for compulsory insurance. It will have, therefore, to be held that all places

where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever, would be covered by the definition of “public place” in Section 2 (24) of the Act. To hold otherwise would frustrate the very object of the said Chapter and the Act.”

A Full Bench of the Madras High Court in **United India Insurance Company Limited vs. Parvathi Devi and others, 1999 ACJ 1520** has also expressed similar views. As place of accident is workshop of Haryana Roadways, may be accessible to a limited number of members of the public, it is difficult to uphold plea of the insurance company that occurrence did not take place at a public place. Thus, the insurance company is exonerated of its liability to pay compensation.

The second submission made by counsel for the insurance company that as the deceased was an employee of the Haryana Roadways, the insurance company cannot be called upon to indemnify the insured is misconceived and liable to be rejected. It is difficult to accept that as the offending vehicle belonged to Haryana Roadways, every employee of the Haryana Roadways would be treated as an insured and, therefore, the insurance company is exempted to compensate the legal representatives of the deceased, who are entitled to benefit of benevolent legislation.

Indisputably, the deceased was working as a Conductor with the Haryana Roadways. It is also undenied that family of the deceased shall be entitled to benefit of compassionate assistance under the Rules. The appeals were argued at a point of time when the matter with regard to deduction of benefits given under the Rules out of compensation payable under the Act was pending consideration before Hon’ble the Supreme Court of India. However, the issue is no longer res-integra in view of

enunciation of law laid down by the Apex Court in **Reliance General**

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holding that benefit given under the Rules shall be deducted from compensation assessed under the Act. In this view of the matter, compensation shall be assessed in the light of materials on record and benefit available under the Rules.

This brings the Court to the issue as to what compensation is payable to the claimants qua loss of dependency. The evidence on record establishes that the deceased was drawing gross salary of Rs.31,221/- detailed in Ex.P1, reproduced for ready reference:-

“B-Pay	13570
D- Pay	3200
Medical	500
D.A.	12074
W.A.	200
<u>H.R.A.</u>	<u>1677</u>
Total	31221”

The Tribunal has assessed income of the deceased at Rs.22,518/- on the basis of net pay of July, 2012 excluding an amount of Rs.7,500/- deducted towards GPF and Rs.30/- for Group Insurance Scheme etc.

Counsel for the insurance company is not in a position to justify deduction of Rs.7,530/- out of gross salary of Rs.30,048/- in July, 2012.

The claimants examined one of the officials of Haryana Roadways to prove salary of the deceased. The annual statement Ex.P2 includes arrears of dearness allowance for the financial year 2012-13. The salary certificate for the month of July 2012 shows that earlier the deceased

was getting dearness allowance (D.A.) at Rs.10,901/-, which was later enhanced to Rs.12,074/-. Under the circumstances, the claimants shall be entitled to benefit of income on the basis of salary certificate Ex.P1 proving gross salary of Rs.31,221/-. The deceased was 56 years old at the time of accident. The Tribunal has rightly allowed deduction to the extent of 1/3rd and adopted a multiplier of 9. The claimants shall not be entitled to benefit of increase in income for future prospects in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.**

In view of the above, annual income of the deceased is Rs.31,221 x 12 = Rs.3,74,652/-. There would be liability to pay income tax on Rs.74,652/- after allowing standard deduction (Rs.2,00,000/- and the exemption under Section 80(c) of the Income Tax Act, 1961 (upto Rs.1,00,000/-) for the financial year 2012-13. The tax at the rate of 10% on Rs.74,652/- would be Rs.7,465/-. Thus, income for loss of dependency is calculated at Rs.22,03,122/- [Rs.33,04,683/- (Rs.3,67,187/- x 9) – Rs.11,01,561/- (1/3rd for personal expenses)].

Davinder Pal, PW-3, has deposed that family of deceased Harmesh Kumar shall get salary except House Rent Allowance (HRA) and washing allowance till 31.01.2014, the date of superannuation and thereafter his family will get pension. As salary available to family under the Rules is liable to be deducted, the amount after deducting washing allowance and HRA w.e.f. 01.08.2012 till 31.01.2014 comes to Rs.5,28,192/- (Rs.29,344/- x 18). After deducting an amount of Rs.5,28,192/- the compensation qua loss of dependency comes to Rs.16,74,930/-.

Under conventional heads, loss of consortium of Rs.1,00,000/- to the widow and Rs.25,000/- for transportation and funeral expenses awarded by the Tribunal are affirmed. Mother of the deceased is awarded an amount of Rs.50,000/- for loss of love and affection. The claimants shall also be entitled to Rs.25,000/- for loss of estate. In this manner, total compensation comes to Rs.18,74,930/- and reduced compensation is Rs.1,14,582/-. The insurance company shall be entitled to recover Rs.1,14,582/-, if already paid to the claimants.

For the foregoing reasons, the appeal filed by the insurance company is allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimants is dismissed.

NOVEMBER 10th , 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no