221.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross Objection No.89-CII of 2015 in/and FAO No.516 of 2013 (O&M)
Date of decision:23.02.2016

Royal Sundaram Alliance Insurance Company Limited.
... Appellant

versus

Smt. Krishna and others .... Respondents

II. Cross Objection No.91-CII of 2015 in/and FAO No.517 of 2013 (O&M)

Royal Sundaram Alliance Insurance Company Limited.
... Appellant

versus

Smt. Kusum Devi and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.S. Madan, Advocate,
for the appellant.

Mr. Neeraj Khanna, Advocate,
for respondents 1 to 4/Cross Objectors in FAO No.517 of 2013 and for respondents 1 to 3/Cross Objectors in FAO No.516 of 2013.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. Both the appeals are at the instance of the insurer on the issue of negligence and quantum. The cross objections have been

filed with applications for condoning the delay of 586 days in filing the cross objections in both the appeals.

2. The deceased persons were pillion riders in a motorcycle and the contention is that Section 138 of the Motor Vehicles Act provides that a motorcycle can be driven with two persons only and the fact that three persons were travelling must be taken as contributing to the accident. The counsel would rely on a judgment of this court in ***Angrejo Devi and others Versus Jai Parkash and others-2012(4) PLR 604*** to contend that a case of contributory negligence must be inferred for the pillion riders who were more in number than what was permitted.

3. I reject this contention for two reasons: (i) a pillion rider cannot be said to have contributed to the accident and the driver must take responsibility for his conduct in taking more persons than authorized. As far as the pillion riders are concerned, it is a case of composite negligence, if the conduct of the driver of the vehicle must be taken as having contributed to the accident. The case of contributory negligence cannot, therefore, be attributed to the pillion riders; (ii) an assessment of contributory negligence is essentially a question of fact. The decision in ***Angrejo Devi*** (supra) records the fact that the deceased was 50 years of age and he had lost his balance by carrying more than what was authorized. I make no assumption when there was no evidence placed in this regard.

Indeed, the counsel for the insurer himself admits that there was no evidence placed as regards the contributory negligence.

4. On the issue of quantum, the argument raised by the counsel for the insurer is that the deceased persons were 38 and 22 years of age respectively. They were said to be agricultural labourer and the Tribunal has taken ₹6,000/- as the income and assessed the compensation, when, according to him, the notified wage at the relevant time for an unskilled labour was ₹3,300/- only. I am prepared to accede to the plea but the income could never be stagnant at the same rate even for unskilled labour and the court will take judicial notice of the fact that the government notifications regarding minimum wage are periodically issued every year. It has been the experience that there have been only gradual increases and never a decrease over a period of time. I will make a prospect of increase for the minimum wage taken and apply the prospect of compensation as provided in ***<u>Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121</u>*** and ***<u>Rajesh Versus Rajbir Singh-2013(9) SCC 54</u>***. The various heads of claims are tabulated in FAO No.516 of 2013 are as under:-

Accident	01.03.2009		
Age	38 years		
Occupation	Labourer		
Claimants	Widow, 2 minor children		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)

1.	Income	6,000	3,300
2.	Add,% of increase 30%/50%	9,000	4,950
3.	Deduction ½, 1/3, ¼, 1/5		3,300 (1/3rd)
4.	Multiplicand		39,600
5.	Multiplier		15
6.	Loss of dependence		5,94,000
7.	Medical expenses		
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		2,00,000
10.	Loss to estate	5,000	5,000
11.	Funeral expenses	5,000	25,000
	Total	8,30,000	9,24,000

There shall be an award of ₹9,24,000/- and the additional amount of compensation shall attract interest at 6% taking note of the fact that there has been a delay of more than a year for filing a cross objection, the claimants themselves must take the responsibility for the delay and the benefit of such delay for reduction of liability for interest would be on the insurer.

5. The various heads of claims are tabulated in FAO No.517 of 2013 are as under:-

Accident	01.03.2009		
Age	22 years		
Occupation	Labourer		
Claimants	Widow, 1 child and parents		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1.	Income	6,000	3,300
2.	Add,% of increase 30%/50%		4,950
3.	Deduction ½, 1/3, ¼, 1/5		3,712.50 (1/4th)
4.	Multiplicand		44,550
5.	Multiplier		18
6.	Loss of dependence		8,01,900
7.	Medical expenses		

8.	Loss of consortium		1,00,000
9.	Loss of love and affection		2,00,000
10.	Loss to estate		5,000
11.	Funeral expenses		25,000
	Total	9,82,000	11,31,900

There shall be an award of ₹11,31,900/- and the additional compensation shall attract interest at 6% from the date of petition till date of payment.

6. The accident took place in the year 2009 and I have applied multiplier of 15 and 18 respectively. As far the claimants in FAO No.516 of 2013, the minors' share of the amount shall be kept in deposit for a period of their minority and 75% of the same will be directed to be withdrawn on attaining majority. The rest of 25% shall be invested for a period of 3 years, split into 3 equal portions, the first portion for a period of 1 year, the 2nd portion for a period of 2 years and the 3rd portion for a period of 3 years. The widow shall be entitled to 60% of the amount presently and the remaining 40% shall be kept in deposit for a period of 6 years, split into 6 equal portions, the first portion for a period of 1 year, the 2nd portion for a period of 2 years and so on upto 6 years.

7. In FAO No.517 of 2013, the distribution shall be in the ratio of 2:2:1:1 between the widow, child and the parents respectively. As regards the share of the parents, the same shall be permitted to be withdrawn immediately but as regards the share of the widow, the direction for distribution of the amount shall be in

the same manner as provided above in the above case. The Tribunal will give appropriate instructions to the bank in which the amounts are deposited that as and when the amounts will be matured, the amounts will be disbursed directly to the party under the advice of the Tribunal.

8. The awards are modified and the appeals by the Insurance Company are dismissed and the cross objections are allowed subject to the above directions.

9. The amount of ₹25,000/- deposited in each of the cases is directed to the dispatched to the Tribunal for part satisfaction of the claims under the respective awards.

(K.KANNAN)
JUDGE

23.02.2016
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