IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 18.11.2016

FAO 5234 of 2013

Charanjit Kaur and others .... *Appellants*

Versus

Balbir Singh alias Bira and others ....*Respondents*

FAO No. 5276 of 2013

United India Insurance Company Limited ....*Appellant*

versus

Charanjit Kaur and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Mayank Mathur, Advocate
for the appellants/claimants

Mr. R N Singal, Advocate
for the Insurance Company

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Rekha Mittal, J. (Oral)

This order shall dispose of the aforesaid petitions as these have emerged out of the same award dated 02.07.2013 passed by the Motor Accidents Claims Tribunal, Patiala (in short, 'the Tribunal') whereby compensation has been awarded in favour of Charanjit Kaur and others in regard to death of Kuldeep Singh in a motor vehicular accident that took place on 18.07.2011.

FAO No. 5234 of 2013 has been filed by the claimants seeking enhancement of compensation whereas FAO No. 5276 of 2013 has been preferred by the United India Insurance Company Limited to challenge its liability to pay compensation. However, for the sake of convenience, the parties shall be referred to as 'the Company' and 'the claimants' and facts are taken from FAO No. 5234 of 2013.

Counsel for the claimants has submitted that the learned Tribunal has awarded a consolidated sum of Rs.5,50,000.00 without going into the question of income of the deceased, multiplier to be adopted, deductions to be made and compensation admissible under the conventional heads. It is further argued that the manner in which the Tribunal has proceeded to determine compensation in a death case is unknown to law and is contrary to what has been held by Hon'ble the Supreme Court in umpteen number of judgments. Counsel has prayed that compensation may be assessed by computing loss of dependency and under conventional heads in the light of judgment of Hon'ble the Supreme Court ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., 2009(6) SCC 121*** and ***Rajesh & Ors. v. Rajbir Singh & Ors., 2013 (9) SCC 54***.

It has further been argued that the deceased was a driver of a heavy transport vehicle and his driving licence in this regard has been proved on record. The deceased was less than 40 years of age, thus, benefit of future prospects to the extent of 50% is admissible and appropriate multiplier would be 15.

Counsel for the Company, on the contrary, has supported the award qua assessment of compensation. However, it has been vehemently argued that as the insured failed to produce permit to ply the vehicle in question TATA 1109, the Company is not only to have right of recovery against the insured but is liable to be exclusively exonerated of its liability to pay compensation. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court ***National Insurance Co Limited v. Challa Upendra Rao and others AIR 2004 Supreme Court 4882***. Further reference has been made to judgment of this Court ***Partap Singh v. National Insurance Company and others, Punjab Law Reporter Vol. CLXXV-(2014-3) 799***.

Counsel for the claimants, in reply, has submitted that even if the insured is guilty of committing breach of terms and conditions of contract of insurance constituting a defence under Section 149 (2) of the Motor Vehicles Act, 1988, the Company cannot escape its liability to satisfy award towards the claimants and it can only assert its right of recovery from the insured after satisfying the liability qua the claimants. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Chella Bharathamma 2004 (4) R.C.R. (Civil) 399.***

I have heard counsel for the parties and perused the paper book particularly the award passed by the learned Tribunal.

Before adverting to the submissions made by counsel for the parties in regard to quantum of compensation, I would like to deal with plea raised by counsel for the Company.

The Tribunal has noticed in para 15 of the award that the Company moved an application for giving directions to respondents No. 1 and 2 to bring on record the documents such as driving licence, route permit, registration certificate and insurance policy of the offending vehicle but respondents No. 1 and 2 failed to bring on record any documents. As such, adverse inference is drawn against respondents No. 1 and 2. It has further been held that it is the primary liability of the insurance company to pay the compensation and they are given right to recover the entire compensation from respondents No. 1 and 2.

Keeping in view the ratio laid down in Partap Singh's case and Chella Bharathamma's case (supra) even if the company is not liable to pay compensation for want of the vehicle in question being plied without a permit, it has an obligation to satisfy the award qua the claimants as has been held in the aforesaid judgments. In this view of the matter, no fault can be found in the findings of the Tribunal that the company shall satisfy the award though in law it has no liability and thereafter enforce recovery against the insured and driver of the vehicle.

This brings the Court to quantum of compensation payable to the claimants. As has been rightly argued by counsel of the claimants, the Tribunal has failed to discharge its onerous obligation to assess just, reasonable and equitable compensation by following well settled principles recognized in law. Under the circumstances, the entire exercise is to be undertaken by this Court to assess just compensation.

Kuldeep Singh, deceased is stated to be a driver of heavy transport vehicle. Counsel for the claimants is fair enough to inform that there is no evidence on record as to on which vehicle the deceased was working as a driver at the time of his death. In absence of any tangible evidence that the deceased was a driver by profession, we have to rely upon the minimum wage admissible to an unskilled worker in the State of Punjab in July 2011. Keeping in view the minimum wage fixed by the Government of Punjab, income of the deceased is assessed at Rs.4,000/- per month. The deceased was less than 40 years of age, therefore, 50% amount is to be added by extending benefit of future prospects. The mere fact that the matter with regard to future prospects is pending before a larger Bench of Hon'ble the Apex Court is not sufficient to deny the said benefit till the judgment in *Rajesh's* case (supra) is varied or set aside. After applying multiplier of 15 in view of judgment of Hon'ble the Supreme Court in *Sarla Verma's* case (supra) and deduction to the extent of 1/3rd for personal expenses, loss of dependency comes to Rs.4000 x 12 x 15 = Rs.7,20,000.00.

Under conventional heads, an amount of Rs.1,00,000.00 for loss of consortium to widow, Rs.1.5 lacs in equal share for loss of love and affection to the children and Rs.25,000.00 each for expenses on funeral and loss of estate is allowed. The total compensation comes to Rs.10,20,000.00 and the additional compensation is Rs.4,70,000.00 payable with interest at the rate of 7.5% per annum from the date of petition till realization. The additional compensation shall be payable to widow and children of deceased in the ratio of 50:25:25 and the same shall be deposited in Fixed Deposit Receipts for a period of three years. The claimants shall not be entitled to raise any loan against FDRs.

For the foregoing reasons, the appeal filed by the claimants is partly allowed in the aforesaid terms. However, appeal preferred by the Company is dismissed.

No order as to costs.

(Rekha Mittal)
Judge

18.11.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No