IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-3234-2016(O&M)
Date of decision : 18.10.2016

Magma HDI, General Insurance Co. Ltd.

... Appellant

vs.

Kulwinder Kaur and others

... Respondents

2. **FAO No. 3212 of 2016 (O&M)**

Magma HDI General Insurance Co. Ltd.

...Appellant

vs.

Harjinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Pankaj Mehta, Advocate
for the appellant.

AMOL RATTAN SINGH, J.(ORAL)

These are two appeals filed by the insurance company which has been foisted with the liability to pay compensation to the respondents-claimants (respondents no. 1 to 5 in FAO No. 3234 of 2016 and also respondents no. 1 to 5 in FAO No. 3212 of 2016). The appeals impugn the Award of the learned Motor Accidents Claims Tribunal, Ambala, by which two separate claim petitions filed before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988, were disposed of.

The claim petitions were filed by different claimants, in view of the unfortunate death of two brothers, in a motor vehicle accident that took place on 20.11.2014.

2. The facts, taken from impugned Award, are that in both the claim petitions it was claimed that Kulbir Singh and Lakhbir Singh had gone to the market at Saha for making purchases, on an Activa scooter bearing registration no. HR-01-AD-7091, driven by Lakhbir Singh, with Kulbir Singh riding pillion behind him.

As per the claim petitions, the scooter was being driven at a a moderate speed on the left side of the road. At about 1:30 p.m., when the riders reached near the Dashmesh Punjabi Dhaba, Malikpur, a truck bearing registration no. HR-64-B-1513, driven rashly and negligently by its driver (presently respondent no. 6 in both the appeals), allegedly in a rash and negligent manner, came from the opposite side and coming on to the wrong side of the road, it hit the scooter, resulting in the riders falling down and receiving grievous injuries.

It was further stated in the claim petition that one Balwinder Singh was coming behind the scooter, driving a three wheeler and with the help of another person sitting in the three wheeler, Sarwan Singh, he was shifting both the injured to the Civil Hospital, Ambala Cantt, but unfortunately both succumbed to their injuries on the way itself.

The claim petitions also gave the details of the age and income of the two deceased, which would be dealt with separately, in respect of each appeal.

3. Upon notice issued to the respondents before the Tribunal, i.e. the driver, owner and insurer of the aforesaid truck, the driver appeared and filed a written statement in the first claim petition (out of which FAO No. 3234 of 2016 arises), taking preliminary objections with regard to maintainability etc. and further denying the accident in toto.

The owner, i.e. respondent no. 2 before the Tribunal, appeared before it but did not file a written statement.

4. The present appellant, i.e. the insurance company, filed a written statement, also taking the usual preliminary objections on *locus standi*, cause of action, mis-joinder etc., as also with regard to the driver of the truck not holding a valid driving licence, the registration certificate, route permit and fitness certificate not being valid, etc.

It was further contended that the liability of the insurance company was limited in terms of the policy issued and that in any case the truck in question had been falsely involved, by converting a hit and run case into a case of a specific vehicle being involved. Yet further, it was contended that the truck had already been sold by respondent no. 2 prior to the accident, without any intimation to the insurer.

It was also contended that Kulbir Singh was travelling on the scooter at his own risk and was not covered under the insurance policy and yet further, that there was contributory negligence on the part of the driver of the scooter also.

5. In the other claim petition, filed by the legal heirs of Lakhbir Singh (out of which FAO No. 3212 of 2016 arises), the respondents also took the same stands as they had taken in the other case.

6. Upon the aforesaid pleadings, both the claim petitions having been consolidated by the Tribunal, the following issues were framed:-

> *"1. Whether the accident in question took place due to rash and negligent driving of Truck bearing registration no. HR-64-B-1213 by respondent no. 1 Khub Ram resulting into death of Kulbir Singh and Lakhbir Singh, as alleged? OPP*

2. If issue no. 1 is proved, to what amount of compensation and form whom, the claimants are entitled? OPP

3. Whether petitions are not maintainable in present from? OPR

4. Whether petitions are bad for mis-joinder and non-joinder of necessary parties? OPR

5. Whether respondent no. 1 was driving the Truck No. HR64-B-1513 in violation of the terms and conditions of the Insurance Policy? OPR (3)

6. Relief."

7. The first claimant in each petition, i.e. the widows of each of the deceased, having examined themselves, also examined the aforementioned Sarwan Singh, one Ishar Singh and Tarsem Singh as witnesses, other than leading documentary evidence.

The respondents did not examine any witness but respondents no. 1 and 2 tendered some documents, Exs. R-1 to R-4, in evidence. The insurance company also tendered in evidence six documents, Exs. R-5 to R-10.

8. On the issue of negligence, the learned Tribunal found that PW-3, Sarwan Singh, had filed his affidavit, Ex. PW-3/A and had deposed in terms of the affidavit, as also in terms of the version of the accident given in the claim petitions, stating that the entire negligence was that of respondent no. 1.

It was also found by the Tribunal that FIR No. 141 dated 20.11.2014, (i.e. the date of the accident), Ex. P-4, had been registered at Police Station Saha, for the alleged commission of offences punishable under Sections 279 and 304-A IPC, with the number of the truck and the name of the driver specifically mentioned therein.

After investigation of the case, a report under Section 173 Cr.P.C., Ex. P-5, had also been presented to the competent court, indicting respondent no. 1, who had also been charge-sheeted by the said court.

9. On the other hand, the driver of the truck failed to appear as a witness; hence, relying upon the testimony of the eye witness, PW-3, and the factum of an FIR having been registered against respondent no. 1 with him charge-sheeted in criminal proceedings, the issue of negligence was decided against the respondents by the Tribunal.

10. As regards the compensation to be paid to the claimants, in the two claim petitions, the age and income of the deceased being obviously different in each case, the Tribunal decided each accordingly.

Thus, the two appeals before this Court are also now being dealt with separately, as regards the compensation awarded by the Tribunal in each case.

<u>FAO No. 3234 of 2016</u>

As per the claimants, Kulbir Singh was 44 years old at the time of the accident and was working as the Secretary/Collector In-charge of Korwa Kalan Co-operative Milk Producer Society Limited, Korwa Kalan, affiliated to the Vita Milk Plant, Ambala, collecting milk from surrounding villages.

PW-1 testified that her husband received an income of Rs. 93,500/- for the period 01.04.2013 to 31.03.2014 from the society, and that he was getting regular increases his income. She also claimed that after his death, a loss of income, consortium, love and affection and estate had been suffered by the claimants and that she had spent Rs. 1,00,000/- on the transportation and last rites of the deceased.

11. One Ishar Singh was examined as PW-4, who deposed in terms of the testimony of PW-1, to the effect that the deceased was working as a Secretary in the aforesaid Milk Cooperative Society, for about 20 years and that he used to maintained a record for collection of milk, milk testing etc. He further deposed that as per record he was given a salary of Rs. 93,500/- during the year 2013-14 and that the deceased had received payments of Rs. 12,000/-, Rs. 11,000/-, Rs. 9,000/-, Rs. 7,000/-, Rs. 7,000/-, Rs. 10,000/- and Rs. 9,000/- for the months from April to October 2014, respectively. Record in the form of Ex. PW4/B to prove the above was also produced by this witness.

12. Accepting the aforesaid testimony and documentary evidence, the annual income of the deceased Kulbir Singh was accepted to be Rs.93,500/- per annum for the financial year 2013-14, and taking the average of his income from April to October 2014, it was accepted that he was earning an amount of Rs. 9,000/- per month at the time that he died.

His dependents having been shown to be his widow, 40 years old, a daughter 12 years old, a son 12 years old and parents, aged 70 and 71 years (the five claimants), a deduction of 1/4th of that income was applied towards the personal expenses of the deceased and a multiplier of 14 applied to the loss of annual dependent income of Rs. 81,000/-

Thus, a total loss of Rs. 11,34,000/- by way of loss of dependent income was awarded to the claimants, with Rs. 1,00,000/- awarded to the widow of the deceased by way of loss of consortium. The two minors children were also awarded Rs. 1,00,000/- each, with Rs. 50,000/- each awarded to the parents of the deceased on account of the loss of love and affection of their son. Rs. 20,000/- was also awarded for loss of estate and Rs. 25,000/- towards funeral expenses.

Thus, a total compensation of Rs. 15,79,000/- was awarded to respondents no. 1 to 5 in FAO No. 3234 of 2016.

FAO No. 3212 of 2016

As regards the claim petition filed by the legal heirs of Lakhbir Singh, his widow claimed that he was 33 years old and was a Naik in the Army, with the 51, Engineers Regiment.

The salary of the deceased was proved by PW-5, Tarsem Singh, of the aforesaid Army Unit, by way of a salary certificate, Ex. PW-5/B, showing that he was drawing a salary of Rs. 33,409/- per month.

13. In view of the aforesaid evidence, a 50% increase by way of loss of future prospects of income was added to the monthly income of the deceased, thereby arriving at a figure of Rs. 50,113/- as his monthly income (including loss of future prospects). The number of claimants again being five, i.e. the widow and two sons aged 4 and 12 years, as also the parents aged 70 and 71 years, (the same as in the other petition), a $1/4^{th}$ deduction was again made towards the personal expenses of the deceased (an amount of Rs. 12,528/-), thereby coming to a loss of dependent monthly income of Rs. 37,585/-, or an annual loss of income of Rs. 4,51,017/-.

The deceased being 33 years of age, a multiplier of 16 was applied, thus bringing the loss of dependent income to the claimants to be Rs. 72,16,320/-.

Again, Rs. 1,00,000/- was awarded to the widow of the deceased towards loss of consortium, Rs. 1,00,000/- to each of his two children for the loss of love and affection of their father, and Rs. 50,000/-

each to his parents.

As in the other case, Rs. 20,000/- was awarded towards loss of estate and Rs. 25,000/- towards funeral expenses, thereby coming to a total compensation of Rs. 76,61,320/-.

14. As regards the liability to pay the compensation, in both the aforesaid cases, the contention of the present appellant, i.e. the insurance company with which the truck was insured, had raised an argument that the vehicle was not carrying any valid permit on the date of the accident.

On the other hand, the driver and owner of the vehicle had placed on record tax receipts as Ex. R-4, along with a verification report, Ex. R-9.

It was found by the Tribunal that Rs. 4,200/- (penalty) had been paid by the first respondent, for not possessing a valid permit for the State of Haryana and as such, it took up the issue of whether the tax penalty receipt, Ex. R-4, could be accepted to be a route permit for the State.

A judgment of this Court was cited, in **New India Assurance Co. Ltd.** vs. **Mahesh and others** decided on 30.07.2013 (FAO No. 6772 of 2011), wherein it was held that if tax was deposited and a temporary permit to ply in the State granted to a vehicle, the insurance company could not be exonerated of its liability to pay the compensation which was awarded by the Tribunal.

On the basis of the aforesaid judgment it was held that penalty having been paid for plying the truck in the State of Haryana, the insurance company was liable to indemnify the owner of the vehicle, as there was no breach in the terms and conditions of the policy.

15. Thus, holding all the respondents equally liable to pay the

compensation awarded in each claim petition, interest too was awarded on the compensation amount in each case, @ 7.5% per annum, running from the date of filing of the claim petitions till the realization of the amount.

16. Before this Court, as had been recorded in the order dated 05.08.2016, learned counsel for the appellant-insurance company had submitted that no income tax had been deducted from the salary of the deceased towards computation of the loss of dependent income of the respondent-claimants. He had also submitted that contributions towards the insurance and provident fund, as were made by the deceased, who was a Naik in the Indian Army, should also have been deducted by the Tribunal. In this regard he had relied upon a judgment of the Supreme Court in ***Asha and others Vs. United India Insurance Company Limited and another, 2004 ACJ 448.*** However, this Court had already expressed its opinion with regard to the fact that such contributions towards provided fund and insurance cannot be deducted, in terms of the judgment of the Supreme Court in ***Helen C. Rabello Vs. Maharashtra State Road Transport Corpn., (1999) 1 SCC 1990,*** which had obviously not been brought to the notice of their Lordships in ***Ashas' case (supra).***

It was not denied by the learned counsel for the appellant, that thereafter, the ratio of the judgment in ***Helen C. Rabellos' case*** has been followed constantly.

17. In any case, monthly contributions made towards provident fund and any insurance scheme floated by the institution where a deceased worked, cannot be taken to be expenses deductable from the salary of the deceased, because they were contributions made by him towards his retirement / afterlife benefits, which, had they continued to be deducted

from his salary, had he remained alive, would have come back with dividends in the form of interest, to him upon his retirement, or to his legal heirs upon his death. Therefore, simply because he was deferring the utilisation of the amounts contributed by him on a monthly basis, till the time that he retired or died, cannot be taken to be sums which were not available to him and his dependents. Hence, on that reasoning, the owner/insurance company of a vehicle involved in a motor accident, cannot claim that the said amounts should be deducted from the monthly income of the deceased.

18. As regards the issue of deduction of income tax, learned counsel was to move an application showing that there was no income tax deduction at source, in the salary certificates led by way of evidence before the Tribunal, on the basis of which the income of the deceased had been assessed. However, no such application has been filed till date and consequently, it is very obvious to this Court that in the salary certificates led by way of evidence before the Tribunal, in the case of both the deceased, the income tax deductible would have been so deducted at source, to calculate their net payable salary.

Consequently that contention is also rejected.

19. Learned counsel for the appellant however further pointed to the fact that the vehicle owned by respondent no.7, i.e. the truck bearing registration no.HP-64B-1513, actually was not carrying a valid route permit at the place of the accident and it was only on the basis of tax receipts led by way of evidence by the said respondent, that it was held that a valid route permit was possessed by the owner of the vehicle, in respect of the said vehicle.

He further submits that the tax receipts were issued in Haryana, whereas as per a verification report submitted by the appellant-insurance company (led by way of evidence as Ex.R5 before the Tribunal), it had been investigated by the company, at the office of the Regional Transport Authority, Solan (H.P.), that a valid route permit was issued to respondent no.7 in respect of the aforesaid vehicle on 24.01.2015, valid up to 18.01.2016, and no permit was ever issued thereafter to him.

(The accident in question is shown to have taken place on 20.11.2014).

20. In this regard, it is seen that firstly, the copy of Ex.R5, produced by learned counsel in Court today, is simply a letter written to Sh.Viresh Prasad Gupta, an Advocate in Ambala, by Sh.Raman Gupta, an Advocate in Solan, stating that he had visited the office of the Secretary, RTA, Solan and had found that the permit was issued (to the vehicle in question) on 24.01.2015, valid uptil 18.01.2016 and that no permit had ever been issued by the said office "in favour of Sh.Ratti Ram, valid on 20.11.2014. So it can be safely concluded that the vehicle was being driven with any permit obiviously especially on 20.11.2014"(sic).

A copy of Ex.R6 has also been produced in Court by learned counsel for the appellant company, which is seen to be a letter by the aforesaid Sh.Raman Gupta, Advocate, addressed to the Secretary of the Regional Transport Authority, Solan, seeking information with regard to the above.

Thus, neither any letter from the Regional Transport Authority, nor even any endorsement on the application made by the Advocate (Ex.R6), is seen to be authenticating the investigation, in the form of any actual statement to that effect by the transport authority.

20. Even presuming (though such presumption is not actually possible simply on the aforesaid letters), that there was no route permit issued by the Solan Authority on the date of the accident, however, admittedly, a tax penalty receipt, Ex.R4, was issued by the authorities of the State of Haryana, at the time when the vehicle entered that State on 20.11.2014 and upon payment of such penalty, the vehicle was allowed to enter into Haryana and to ply in the State. Hence, a tax penalty receipt, in the opinion of this Court also, as has already been held by a Co-ordinate Bench in The New India Assurance Company Ltd. Vs. Khuma Kumari and others, (FAO no.6772 of 2011), served as a valid permit for the vehicle to ply in the State.

Hence, I find no reason to upset the reasoning given by the learned Tribunal on that issue either.

21. Consequently, finding no ground to entertain this appeal; it is dismissed in limine, but since no notice has been issued, there is no order made as to costs.

(AMOL RATTAN SINGH)
JUDGE

October 18, 2016.
Davinder Kumar/nitin

Whether speaking / reasoned Yes
Whether reportable Yes