IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1181-2009 (O&M)
Date of Decision: 03.08.2017

M/s. Amba Furniture ...Appellant

V/s.

New India Assurance Company Ltd. and others ...Respondents

AND

FAO-221-2009 (O&M)

Parveen Sharma and another ...Appellants

V/s.

M/s. Amba Furniture and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. N.K. Bansal, Advocate for the appellant in FAO-1181-2009.

Mr. Jaideep Verma, Advocate for the appellant in FAO-221-2009.

Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the insurance company.

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AMIT RAWAL, J. (Oral).

By this order, I shall dispose of two appeals i.e. FAO-1181-2009 and FAO-221-2009 preferred by the owner whereby the liability to pay compensation has been fastened and the legal representatives of the deceased namely Brijesh Sharma seeking enhancement of the compensation.

Learned counsel appearing on behalf of the appellant in FAO-1181-2009 submits that appellant-owner had purchased the API three wheeler bearing registration No. CH-03P/4891 having unladen weight of 415kg as per the certificate of registration of motor vehicle. Such vehicles do not require any permit as per the provisions of sub-section i of sub-section 3 of Section 66 of the Motor Vehicle Act, 1988 which envisages that "***any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms"***. Thus the findings of learned MACT on this premise, rendered in para No. 21, is not sustainable and liable to be set aside. Though during the pendency of the appeal, learned counsel for the appellant moved an application under Section 151 CPC for placing on record the report from the Registration Authority, Chandigarh which stated that the vehicle is exempted from permit. Thus, the judgment rendered by Hon'ble the Supreme Court in ***National Insurance Company Ltd. V/s. Challa Bharathamma and others 2004 ACJ, 2094*** is not applicable. The vehicle had not been given commercial number but only regular one and, therefore, cannot be used for commercial purposes as LMV-T. Insurance company is required to indemnify the insurer. Therefore, the appellant is not liable to pay compensation.

Mr. Paul. S. Saini, learned counsel appearing on behalf of the insurance company has emphatically relied upon the judgment of ***National Insurance Company Limited (supra)*** to submit that Hon'ble the Supreme Court had occasion to examine Section 66 viz a viz of auto rickshaw and it required permit and, therefore, the appellant cannot escape by putting the blame on insurance company.

Mr. Jaideep Verma learned counsel appearing on behalf of the claimants submits that deceased was Property Dealer and Insurance Agent was of 48 years old but only ₹6,000/- has been assessed. Ex. PW-3 has been brought on record to show that the income of the deceased was ₹9,413/- p.m. despite that MACT has committed illegality in taking the income as ₹6,000/- p.m. and no compensation towards loss of consortium, loss of love and affection and loss to estate has been given. Therefore, compensation is liable to be enhanced.

I have heard learned counsel for the parties and appraised the paper book. There is no dispute in the ratio decidendi culled out in judgment cited supra but on close scrutiny the Hon'ble Supreme Court was not rendered assistance with regard to vehicle having particular weight less than 3,000 kg been exempted from obtaining permit. Sub-section (i) of sub-section 3 of Section 66 of the Motor Vehicle Act, 1988 envisages that no permit is required in case the weight of the vehicle is less than 3,000 kg. Seeing the unladen weight of 415 kg as per the certificate, I would not be taking fresh evidence on record in the absence of any order but would adjudicate this issue on the basis of the documents available on record. Be that as it may, the fact remains that once the vehicle was having a weight of less than 3,000 kg, it did not require permit. Moreover, it had been given a normal registration No. CH-03P/4891 which was not a commercial one. Therefore, in my view, insurance company cannot be absolved from its liability being indemnifier. It was purchased in the name of the appellant who was running business of furniture and for supplying the furniture to buyers, transportation from factory to showroom.

Thus in my opinion, findings of the MACT rendered in para No. 21 by MACT requires to be modified to the extent that in view of what has been observed, insurance company is liable to pay compensation. Appeal is allowed to the aforesaid extent.

Mr. Bansal, has submitted that at the time of filing the appeal, a sum of ₹20,000/- has been deposited. In case the aforesaid amount has not been forwarded for onward disbursal, the same is ordered to be refunded to the appellant subject to the identification. As regards the enhancement, Mr. Jaideep Verma, submits that the deceased was 50 years old and after deducting 1/3rd, multiplier of 13 should have been applied instead of 10. I would not be taking into consideration the certificate which has not been proved on record as neither the previous income nor income tax return or any other document has been brought on record to establish that he was earning ₹9,000/-p.m. Hence, income assessed by MACT as ₹6,000/-p.m. is a correct figure. He further submits that nothing has been given on other heads.

The formula prescribed in the ratio decidendi culled out by Hon'ble Supreme Court in ***Sarla Verma's case*** (supra) is required to be applied while assessing the compensation, according to which, I will take the income of the deceased as ₹6,000/- p.m., apply a deduction of 1/3rd for personal expenses, adopt a multiplier of 13 suitable to the age of the deceased, who was 50 years old, ₹1,00,000/- for love of consortium, ₹50,000/- to child, ₹10,000/- for loss of estate and ₹25,000/- for funeral expenses.

However, as regards the increase in income as future prospects, the Hon'ble Supreme Court in the ratio decidendi culled out in the judgment rendered in ***Chikkamma and another Vs. Parvathama and another*** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

"9. Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation has already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused.

In view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Chikkama's case*** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the larger Bench of Hon'ble Supreme Court. The other heads of claim are tabulated as under:-

FATAL ACCIDENT			
Age	50 years		
Occupation	Property Dealer and Insurance Agent		
Claimants	Widow and daughter		
	Heads of claim	**Tribunal**	**High Court**
Sl. No.		Amount (Rs.)	Amount(Rs.)
1	Income	6000	6000
2	Add, % of increase		
3	Less, Deduction	1/3	4000(1/3)
4	Multiplicand (annualized by multiplying 12)	48000	48000
5	Multiplier	10	13
6	Loss of dependence		624000
7	Medical Expenses & Transportation		
8	Loss of Consortium		100000
9	Loss of love and affection		50000
10	Loss of estate		10000
11	Funeral expenses		25000
	Total	480000	809000

The amount of compensation payable shall be ₹8,09,000/-. The amount in excess over what has already been provided by the Tribunal shall attract interest @6% from the date of filing of the appeal till realization. Insurance company would be liable to pay the compensation.

The award is modified and the appeal is allowed to the above extent.

August 03, 2017 **(AMIT RAWAL)**
Divyanshi **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No