IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.145 of 2011 (O&M)
Date of Decision: 13.9.2017

Kusum Lata and others ..Appellants

Versus

Pankaj Kumar and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Gaurav Gupta, Advocate for the appellants

Mr.Paul S.Saini, Advocate for respondent no.5

RAJIV NARAIN RAINA, J. **(Oral)**

1. This case was put up for re-hearing in order to bring greater clarity on facts.

2. The learned counsel for the parties have been again heard at some length.

3. In the impugned award, the respondent-insurance company has been absolved of its liability for want of production of valid driving licence and permit for plying the vehicle on road. The learned Tribunal permitted the production of the two documents before the executing court. The claimants have filed this appeal for enhancement of compensation while the Insurance Company has filed Cross-objections questioning the jurisdiction of the Tribunal to remit the matter for consideration of the two documents by the executing court while it should have itself called for and examined the two documents and passed final award. The argument may hold good since the learned Tribunal itself could have given opportunity to the owner at the appropriate stage to the parties to produce the moot documents on which reliance was placed to fend off its liability as per the policy of insurance.

4. However, a *fait accompli* has been created in the executing court when the documents have been produced and duly exhibited on record and found to be genuine after inquiry and held to be good documents to rest the liability to pay compensation on the respondent-insurance company. For this reason, the contention of Mr. Saini is turned down. Also for the reason that it will unnecessarily prolong the proceedings, if the report is set aside and the matter remanded for fresh determination by the learned Tribunal.

5. These facts regarding the fate of the two documents found reliable evidence by the executing court are not pleaded in the present file and the statement of the learned counsel for the claimants is accepted as true saving just exceptions, i.e. in case the insurance company is ultimately able to prove in a court of law that these documents are factually not valid, then it would have right to take recourse to law before the learned Tribunal itself. For this, the bar of limitation, if taken, would not come in the way of the insurance company which will be entitled to recover the amount of compensation from the owner and driver of the offending vehicle, in case it is proven otherwise. In view of this, the objection of Mr.Saini is declined at this stage.

6. Having considered the case on quantum of compensation and reheard the arguments of the respective parties, there can be no dispute that given the age and income of the deceased, the loss of dependency would come to a sum of ₹ 4,76,000/-. There can also be no cavil that an amount of ₹ 25000/- should be awarded for treatment, transportation and funeral expenses which has already been awarded by the learned Tribunal. However, there is a shortfall in the award of compensation for loss of consortium, love and affection to the widow, which the learned Tribunal has wrongly restricted to only ₹ 24,000/- which amount in view of law in <u>Rajesh v. Rajbir Singh,</u> (2013) 9 SCC 54, has to be enhanced to ₹1.00 lakh to each claimant for loss of consortium and love and affection. The

Tribunal has not awarded compensation for loss to the estate of the deceased. The loss to estate is calculated @ ₹ 5000/- as per the Schedule.

7. The total amount awarded by the learned Tribunal was ₹ 5,25,000/- and with the enhancement as above, the figure would reach a sum of ₹ 7,06,000 with the additional enhancements. The difference between the amount as assessed and awarded by the learned Tribunal and the amount awarded by this Court on hearing the parties is ₹ 1,81,000/-. This amount is due and payable and would carry interest @ 7.5% per annum from the date of the claim petition till deposit. The total amount worked out in the manner aboce be deposited before the executing court by the respondent-insurance company within one month from the date of receipt of a certified copy of this order for onward disbursement to the claimants. In case of default in deposit of the amount within the time allowed, the amount in default, would carry penal interest at the rate of 12% per annum until its realization as a performance guarantee.

8. Accordingly, the appeal is partly allowed. The Cross-objections of the insurance company are dismissed and the award of the learned Tribunal is modified in terms of this order.

(RAJIV NARAIN RAINA)
JUDGE

13.9.2017
MFK

Whether speaking/reasoned *Yes*

Whether reportable *No*