IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2123 of 2011
Date of Decision.29.08.2017

New India Assurance Company Ltd. ....Appellant

Vs

Nirmal Singh and others ....Respondents

2. **FAO No.4203 of 2011**

Nirmal Singh ....Appellant

Vs

M/s S.S. Associates and others ....Respondents

Present: Mr. Ashwani Talwar, Advocate
for the appellant in FAO No.2123 of 2011
and for respondent No.2 in FAO No.4203 of 2011.

Mr. M.S. Longia, Advocate
for the appellant in FAO No.4203 of 2011 and
for respondent No.1 in FAO No.2123 of 2011.

Mr. D.C. Mittal, Advocate
for respondent No.1 in FAO No.4203 of 2011
and for respondent No.3 in FAO No.2123 of 2011

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

C.M. No.15610-CII of 2011 in FAO No.4203 of 2011

For the reasons stated in the application, delay of 20 days in filing the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of two appeals bearing Nos.2123 of 2011 and 4203 of 2011. FAO No.2123 of 2011 has been filed at the instance of the insurance company seeking setting aside of the award rendered by the Tribunal granting compensation of ₹3,73,000/- with interest @6% per annum from the date of award till realization in a petition filed under Section 163-A of the Motor Vehicles Act on behalf of Nirmal Singh and Randhir Kaur i.e. parents of Dharminder Singh, who unfortunately died in a road accident on 15.2.2009. FAO No.4203 of 2011 is at the instance of the claimants seeking enhancement of compensation.

The case set up by the claimants in the claim petition, according to Mr. Ashwani Talwar is that the deceased-Dharminder Singh along with others was travelling in the car as the owner had sent him for personal work. When they reached near railway bridge Morinda, the deceased lost control over the car and struck with the divider of the road and railing of the bridge, resulting into multiple injuries which proved fatal.

The question posed in the present appeal is whether in the absence of premium for Personal Accident Cover in a Package Policy, the insurance company can be called upon to indemnify the owner or not.

Mr. Ashwani Talwar, learned counsel appearing for the insurance company has drawn attention of this Court to the insurance policy whereby premium of ₹800/- towards third party and ₹25/- for Driver has been paid. By referring to the aforementioned policy, he submits that though it was a Package Policy but there is no indemnification qua the deceased owing to known explanation of his status, for, the owner had not stepped into the witness box to admit or deny that Dharmainder Singh was his employee and working as driver with him. Therefore, the insurance company is liable to be absolved from the indemnification, thus, finding given by the Tribunal in this regard is liable to be set aside.

Mr. Mittal, learned counsel appearing on behalf of the owner submits that the finding arrived at by the Tribunal does not call for interference as cross-examination of PW-1 namely Nirmal Singh done by the insurance company proved the case of the claimants, thus, it has failed to establish that the deceased was not working as Driver and therefore, premium of ₹25/- would take care of the indemnification clause and the insurance company cannot be said to be absolved.

Mr. M.S. Longia, learned counsel appearing on behalf of the appellant-claimant submits that the amount of compensation assessed on account of death of a young man of 28 years old by applying multiplier of 15 in a petition filed under Section 163-A is on lower side whereas the multiplier should have been 18. The amount provided under the head of General Damages is also on the lower side, therefore, the award of the Tribunal is liable to be modified.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Talwar, for, cross-examination of Nirmal Singh conducted by the insurance company and as well as by the owner proved the case of the claimants, which reads as under:-

> "*xxxxxxx by counsel for respondent No.2.*
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> *It is correct that I have not seen the accident as such I cannot say how and when accident took place. I lodged DDR with the police on 16.2.2009 whereas the accident took place on 15.2.2009. Manjit Singh told us about the accident on 15.2.2009 at about 11.00 pm. I am not mentioned this fact in the DDR when the DDR lodged by me. My son deceased was 28 years old. I am 60 years old. My wife is about 56 years old. I am agriculturist. I own 11 kila of land. My deceased son does not having any land. He was driver apart from*

driving he was not doing any job. He was doing the driving job as part time. I do not know with whom he was driver. I do not know how much income he was earning in the month. He may be earning Rs.6/7 thousand per month. I have not maintained any record with regard to the expenditure incurred on his last rites of deceased. Deceased was unmarried. It is incorrect that my son had not died in the accident. It is incorrect that I have filed false claim petition to get the illegal compensation.

xxxxxx by counsel for respondent No.1.

On 15.2.2009 deceased was sent by respondent No.1 for his personal work. Deceased was doing part time job as driver. He was on duty at that date of accident. He was having driving license. I have not maintained the record of income of deceased. It is wrong to suggest that I am deposing falsely."

On going through the same, it is axiomatic that no concrete evidence or contrary suggestion has been made by the insurance company to establish the fact that the deceased was not the driver and therefore, can seek absolvement. Since the insurance company has charged premium of ₹25/- for the driver, the claimants would be entitled for compensation by treating the deceased to be driver of the owner. In the absence of contrary evidence or statement, non-appearance of the owner would not be a ground to non-suit the claimants. In such a situation, I am of the view that the insurance company is liable to indemnify the owner and rightly so the Tribunal arrived at such conclusion, which does not call for interference.

As regards the liability, the award passed by the Tribunal is upheld and the appeal filed by the insurance company in FAO No.2123 of 2011 is dismissed.

As regards the issue of quantum, the multiplier of 15 applied by the Tribunal is not correct, it should have been 18 as per Second Schedule. I will take the income of the deceased as ₹3000, make a cut of 1/3rd towards personal expenses and adopt a multiplier of 18 to assess the loss of dependency as ₹4,32,000/-. Besides this I will also add ₹2500/- towards loss of estate and ₹2000/- for funeral expenses. In all, the compensation payable shall be ₹4,36,500/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The enhanced amount shall be distributed equally between the parents. The liability shall remain the same as has already been determined by the Tribunal.

The award stands modified and the appeal in FAO No.4203 of 2011 is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 29, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No