In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:14.11.2017

FAO No. 2772 of 2012

Madhu Bala and others

---Appellants

vs.

Subhash Chand and others

---Respondents

FAO No. 2824 of 2012

National Insurance Company Limited

---Appellant

vs.

Madhu Bala and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. G.P.Singh, Advocate
for the appellants in FAO-2772 of 2012
for respondent Nos. 1 to 5 in FAO-2824 of 2012

Mr. Ashwani Talwar, Advocate
for the appellant in FAO-2824 of 2012
for respondent No. 3 in FAO-2772 of 2012

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Rekha Mittal, J.

This order will dispose of FAO Nos. 2772 and 2824 of 2012 as these have emerged out of the same award dated 20.1.2012 passed by the

Motor Accidents Claims Tribunal, Gurgaon (hereinafter to be referred to as "the Tribunal") whereby compensation has been awarded in regard to death of Sarjeet Singh son of Sajjan Singh in a motor vehicular accident that took place on 13.5.2009.

FAO No. 2772 of 2012 has been preferred by the claimants/appellants seeking enhancement of compensation whereas FAO No. 2824 of 2012 has been preferred by the National Insurance Company (hereinafter to be referred to as "the insurance company").

FAO No. 2772 of 2012

The Tribunal has assessed income of the deceased at Rs. 10,000/- per month, deducted $1/4^{th}$ for personal expenses and applied multiplier of 17 to compute loss of dependency to the tune of Rs. 15,30,000/-. An amount of Rs. 20,000/- has been awarded for expenses on transportation and last rites making total compensation to Rs. 15,50,000/-, payable with interest at the rate of 7.5% per annum from the date of petition till realization to be shared by the claimants, detailed in para 21 of the award.

Counsel for the appellants has submitted that the Tribunal has committed a grave error by refusing to rely upon income tax return Ex. P-3 filed by the deceased for the assessment year 2007-08 wherein gross turnover of his proprietorship firm M/s Neha Tour and Travels was Rs. 1,12,30,542/- and gross income Rs. 2,12,133/-. It is further argued that the Tribunal on the basis of presumptions and assumptions recorded a finding that the deceased was not a successful business man but as he was taking challenges of life boldly and managing a long fleet of vehicles and was dealing in lakhs, his notional income is assessed at Rs. 10,000/- per month. Another submission made by counsel is that income of the deceased is liable to be assessed on the basis of document Ex. P3 and the claimants are entitled to addition in income for future prospects to the extent of 40% in the light of latest judgment of Hon'ble the Supreme Court of India in **Special Leave Petition (Civil) No. 25590 of 2014 (National Insurance Company Limited vs. Pranay Sethi and others** decided on 31.10.2017 Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the other hand, would urge that the claimants brought on record income tax return for the assessment year 2007-08 but they have not adduced evidence to prove that the deceased filed income tax return for the financial year 2007-08/ assessment year 2008-09 as the deceased died on 13.5.2009. It is argued with vehemence that in absence of latest income tax return and accounts of business statedly carried out by the deceased, claimants cannot derive benefit of income tax return Ex. P3 for the purpose of computing loss of dependency.

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

Indisputably, the claimants produced on record income tax return Ex. P3 wherein the deceased has shown his income to the tune of Rs. 2,12,133/- for the assessment year 2007-08. The claimants examined Kundan Singh, Record Keeper in the office of Income tax, Gurgaon to prove income tax return Ex. P-3. The Tribunal has taken note of that the deceased invested personal capital amounting to Rs. 7,15,682/- and borrowed an amount of Rs. 43,09,985/- and if this amount is invested in a fixed deposit receipt it would generate interest income to the tune of Rs. 3 lakhs per annum at the rate of 6% per annum. The Tribunal failed to take into consideration that the deceased created assets i.e. fleet of vehicles by investing this amount which would be a source of income even in future. This apart, the deceased has taken benefit of depreciation @ 25%, excluding his income of approximately 15 lakhs in this regard from income tax liability when otherwise actual depreciation of value of vehicles may not be 25%. In the given circumstances, reasoning adopted by the Tribunal to ignore income of the deceased reflected in the income tax return is not well founded and cannot be affirmed.

Perusal of testimony of Kundan Singh PW5 would reveal that there is no record with the income tax office if the deceased had filed income tax return for the financial year 2007-08/assessment year 2008-09. In the absence of any evidence that the deceased stopped business of M/s Neha Tour and Travels, non-filing/production of the latest income tax return is not a circumstance to be taken against the claimants.

Perusal of the income tax return Ex. P3 would reveal that liability to pay income tax was Rs. 17,775/-. After deducting tax liability, income of the deceased is assessed at **Rs. 1,94,358/-** (2,12,133 – 17775). There is no dispute with regard to deduction for personal expenses and multiplier adopted by the Tribunal. The deceased was 27 years old at the time of occurrence. The claimants are allowed benefit of increase in income for future prospects to the extent of 40%. In this manner, loss of dependency comes to Rs. 1,94,358 x 17 = 33,04,086 +

13,21,634 (40%)=46,25,720 -11,56,430 (minus 1/4th)= Rs.34,69,290/-

The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation comes to **Rs.35,39,290/-** and the additional amount is **Rs. 19,89,290/-(**35,39,290/-15,50,000). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to widow and children of the deceased in the ratio of 20:40:40. The amount falling to share of the minors shall be deposited in fixed deposit receipts payable on their attaining the age of majority or for a period of three years, whichever is later. Interest accruing on the FDRs shall be payable to mother of the minors for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

FAO-2824 of 2012

The sole submission made by counsel for the insurance company is that as the vehicle in question was being plied without a permit, the insured is guilty of committing breach of terms and conditions of the contract of insurance constituting a defence under Section 149(2) of the Motor Vehicles Act, 1988 (in short "the Act"). To substantiate his contention, it is argued that the insured failed to produce the permit despite notice issued by counsel for the insurance company under Order 12 Rule 8 of the Code of Civil Procedure and application filed by the insurance company before the Tribunal calling upon the insured to produce the permit. It is further argued that the application filed by the insurance company finds reference in order dated 19.9.2011 passed by the Tribunal. The Tribunal despite passing an order dated 24.10.2011 that an adverse inference can well be drawn in this regard at the time of final decision of the case, no such adverse inference was actually drawn at the time of final disposal of the case. According to counsel, as the insured is guilty of committing breach of terms and conditions of contract of insurance, the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative be given recovery right against the insured after satisfying the award qua the claimants.

Counsel representing the claimants, on the other hand, would urge that even if the insured is held guilty of violating terms and conditions of the contract of insurance, insurance company cannot escape its liability to satisfy claim of the third party. Counsel has further submitted that though the claimants has nothing to do with the issue of violation on the part of the insured but the insurance company has failed to prove any such violation at the behest of the insured raising any defence available under Section 149 (2) of the Act.

I have heard counsel for the parties, perused the paper book and the records.

Indisputably, the insurance company (respondent No. 3 therein) filed reply to the claim application. In para 11 of the preliminary objection, it was averred that respondent No. 2 has violated Section 66 of the Act as he was not having valid route permit to ply the vehicle in the State of

Haryana. Counsel for the insurance company tendered into evidence copy of notice sent to Proprietor S.K.Travel Ex. R2 and postal receipt (Ex. R3). Perusal of Ex. R2 would reveal that even through this notice, though not proved in accordance with law, addressee was called upon to supply information and papers viz valid and effective route permit of vehicle bearing No. DL-1PB-6487 covering date of accident i.e.13.5.2009. In the application filed by the insurance company for production of documents, a request was made for production of route permit of the vehicle in question. Perusal of averments raised in para 11 of the reply, notice Ex. R-2 and application for production of documents leaves no manner of doubt that the insurance company had sought to raise a plea that as there was no route permit for plying the vehicle in question in the State of Haryana, the insured is guilty of committing breach of terms and conditions of contract of insurance. It was neither the plea of insurance company that the vehicle did not possess a permit required to be issued under Section 66 of the Act nor it ever called upon the insured to produce the permit qua the vehicle in question. Even if contention of the insurance company is accepted that the insured did not possess a route permit to ply the vehicle in question in the State of Haryana as was sought to be raised in the reply as well as subsequent thereto, non-possessing of route permit or deviation from a route permit does not constitute a valid defence under Section 149(2) of the Act in favour of the insurance company. For this purpose, reference can be made to the Division Bench judgment of this Court **National Insurance Company Limited vs. Kamlesh Kaur and others 2006(3) RCR(Civil) 634**. In this view of the matter, the insurance company cannot seek any aid to its contention from the order dated 24.10.2011 passed by the Tribunal for raising an adverse inference against the insured.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

14.11.2017
paramjit

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