IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 04.08.2017

FAO No. 2390 of 2013 (O&M) and
Cross Objection 223 CII of 2014

United India Insurance Company Limited .... Appellant

Versus

Salim and others ....Respondent

FAO No. 2651 of 2013 (O&M) and
Cross objection 224 CII of 2014

National Insurance Company Limited ....Appellant

versus

Salim and others ....Respondents

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

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Present: Mr. M B Jain, Advocate (FAO 2390 of 2013)
for United India Insurance Company-appellant

Mr. Ravinder Arora, Advocate (FAO 2651 of 2013
for National Insurance Company - appellant

Mr. J S Saneta, Advocate
for cross objectors.

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Rekha Mittal, J.

This order shall dispose of FAO Nos. 2390 and 2651 of 2013 and cross objection Nos. 223 CII and 224 CII of 2014 as these have emerged out of the same award dated 04.01.2013 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short, 'the Tribunal') whereby compensation has been awarded in regard to death of Manir son of Roshan Lal in a motor vehicular accident that took place on 10.11.2009.

The deceased was unmarried son of claimants Smt. Salim and Roshan Lal. The Tribunal assessed income of the deceased at Rs.3,914.00 per month, added 30% for future prospects, deducted 50% for personal and living expenses and adopted a multiplier of 18 to compute loss of dependency at Rs.5,49,504.00, payable with interest at the rate of 6% per annum from the date of petition till realization in case the same is paid within a period of two months failing which interest at the rate of 7.5% per annum shall be payable.

As per case set up by the claimants, accident in question took place due to rash and negligent driving of Tractor bearing No. HR 16-E 5705 insured with National Insurance Company Limited and Jeep No. HR 20E 0131 insured with United India Insurance Company Limited. Both the insurance companies have filed separate appeals to assail the award with regard to quantum and liability to pay compensation.

To assail quantum of compensation, counsel representing the insurance companies would urge that the Tribunal has wrongly allowed multiplier of 18 as per age of the deceased in place of age of parents of the deceased. Another submission made by counsels is that the Tribunal has wrongly allowed benefit of increase in income for future prospects as the matter with regard to future prospects is pending consideration before a larger Bench of Hon'ble the Supreme Court of India in view of reference made in ***National Insurance Company Limited v. Pushpa*** *(SLP (c) No. 16735 of 2014, decided on 02.07.2014)* and the observations made by the Apex Court in ***Shashikala and others v. Gangalakshmamma and another,***

2015 ACJ 1239.

Counsel representing United Insurance Company Limited has made additional argument by contending that liability to pay compensation to the extent of 50% has been wrongly fastened against Jeep No. HR 20E 0131. To substantiate his contention, it has been argued that initially FIR in this regard was registered against Raj Kumar, driver of the Tractor but later the police wrongly presented the challan against drivers of both the aforesaid vehicles.

Another submission made by counsel, in the alternative, is that as Jeep in question was being used for hire or reward, the insured/owner of Jeep is guilty of violating the terms and conditions of the insurance entitling the insurance company to avoid its liability to pay compensation. It is urged that in case liability of the insurance company is affirmed, recovery right against the insured/owner may be allowed.

Counsel has further argued that as the deceased was a gratuitous passenger travelling in the Jeep, the Insurance Company is otherwise not liable to pay compensation as policy in question is an Act policy and not a comprehensive policy to cover risk of the passengers in the Jeep. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court of India ***United India Insurance Company Limited, Shimla vs. Tilak Singh and others, (2006) 4 Supreme Court Cases 404.***

Counsel representing National Insurance Company Limited while refuting contention of counsel for United India Insurance Company Limited would submit that in view of investigation conducted by the police in the FIR lodged at the behest of Manoj son of Shri Prithvi Singh, driver of the Jeep as well as evidence adduced by the claimants in the present proceedings, driver, owner and insurer of the Jeep cannot escape their liability to pay compensation to the extent of 50% in view of findings recorded by the Tribunal. It is argued with vehemence that as Manoj, driver of the Jeep wanted to escape his liability (both criminal and civil), he lodged false FIR indicting driver of the Tractor.

Counsel representing the cross objectors has supported the award passed by the Tribunal with regard to its finding on issue No. 1 that accident in question took place due to composite negligence of Tractor and Jeep involved in the occurrence. However, to controvert contentions of counsels representing the Insurance Companies qua quantum of compensation, it is argued that the Tribunal has rightly applied multiplier of 18 on the basis of age of the deceased in the light of judgments of Hon'ble the Supreme Court ***Sarla Verma (Smt) and others v. Delhi Transport Corporation and another, 2009(3) R.C.R.(Civil) 77*** and ***Munna Lal Jain & Anr. vs. Vipin Kumar Sharma & Ors., (2015) 6 SCC 347.***

With regard to grant of benefit of future prospects, counsel would urge that addition in income to the extent of 50% should be allowed in the light of judgment of Hon'ble the Supreme Court of India ***Rajesh and others versus Rajbir Singh and others 2013 (3) R.C.R. (Civil) 170.*** It is further argued that compensation awarded under conventional heads needs re-look and enhancement.

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

Before dealing with the contentions raised by counsel representing insurance company of Jeep, it is appropriate to deal with compensation determined by the Tribunal.

The deceased was 22 years of age at the time of his unfortunate demise on 10.11.2009. Hon'ble the Supreme Court of India in *Sarla Verma's* case (supra) in its efforts to bring uniformity in the process of assessment of compensation has laid down certain principles with regard to multiplier to be allowed in different age groups, deduction to be made and allowing benefit of increase in income for future prospects in case of death of regular employee. While dealing with the question of deduction in case of death of an unmarried person, the Court has held that deduction would be 50% unless there are special circumstances pleaded and proved by the claimants. In view of principles laid down in *Sarla Verma's* case (supra) and judgment in *Munna Lal Jain's* case (supra), I find myself unable to accept contention of the insurance companies that the Tribunal has wrongly applied multiplier of 18 in place of multiplier as per age of parents of the deceased.

This brings the Court to the question of allowing benefit of increase in income for future prospects. The deceased was 22 years of age and his income has been assessed at Rs.3,914.00 per month. There is nothing on record suggestive of the fact that the deceased was suffering from any ailment much less disability to impair his working capacity. He would not have stagnated at income of Rs.3,914.00 per month, had he remained alive. The mere fact that a reference is pending consideration before a larger Bench of Hon'ble the Supreme Court of India is not sufficient to deny benefit of future prospects till the judgment in *Rajesh's* case (supra) is varied or set aside.

Under conventional heads, the claimants shall be entitled to Rs.25,000.00 for transportation of dead body and funeral expenses, Rs.50,000.00 for loss of love and affection to mother and Rs.25,000.00 for loss of estate. An amount of Rs.10,000.00 for loss of consortium awarded by the Tribunal is set aside as deceased was unmarried. In this manner, total compensation comes to **Rs.7,34,068.00** and the additional amount is **Rs.1,59,564.00,** payable with interest at the rate of 7.5% per annum from the date of petition till realization, exclusively to mother of the deceased.

Shri M B Jain, Advocate representing the insurance company of Jeep has made three folds submissions to deny liability of the insurance company to pay compensation. No doubt, the FIR was registered at the instance of Manoj, driver of the Jeep who had every reason to escape his liability for causing accident. On due investigation by the police, drivers of both the vehicles were challaned for causing accident due to their rash and negligent driving. The evidence adduced by the claimants to prove composite negligence of both the vehicles has been appreciated by the Tribunal in right perspective and cannot be faulted with. There is no material on record to uphold plea of the driver, owner and insurer of Jeep that driver of Jeep cannot be attributed negligence. Under the circumstances, findings recorded by the Tribunal on issue No. 1 are liable to be affirmed and ordered accordingly.

So far as the plea that Jeep was being used in violation of terms and conditions of the contract of insurance, the same is meritorious and deserves to be accepted. The claimants in para 23 of the application has alleged that Manir along with the petitioners and other persons was travelling in Jeep No. HR 20-E 0131 being plied as taxi by respondent No. 4, for going to Khanak. The driver and owner of the Jeep (respondents No. 4 and 5 thereof) filed their reply and in response to para 23, they have not denied the allegations that Jeep was being plied as taxi. As a matter of fact, there is no reply to these allegations. As per the settled position in law, non-specific denial of a fact by the respondent/defendant amounts to admission on his part. Neither Manoj nor Parkash, driver and owner respectively of the Jeep appeared in the witness box to say that Jeep was not being plied as taxi or for hire or reward. In the given scenario, it can be safely held that Jeep in question was used as taxi for the purpose of transporting passengers and for that reason, the deceased, his parents and others were travelling in the Jeep on the fateful day.

Perusal of the insurance policy of Jeep Ex RF makes it evident that under the head of 'Limitation as to use', it has been specifically mentioned, reproduced for ready reference:-

> *"The policy cover use of vehicle for any purpose other than (a) hire or reward."*

As Jeep in question was being used by the insured for the purpose of hire or reward, it amounts to violation of one of the terms and conditions of contract of insurance entitling the insurance company to recover the amount of compensation from the insured after satisfying claim of the victims.

Counsel has also made a submission that the insurance company is entitle to be altogether exonerated of its liability by relying upon judgment of Hon'ble the Supreme Court of India in Tilak Singh's case (supra). Firstly, no such plea was raised by the insurance in the written statement. As the deceased was travelling in Jeep being used as taxi, it is difficult to accept that he was a gratuitous passenger (passenger travelling without payment of charge). As such, the insurance company cannot seek any aid from the judgment in Tilak Singh's case (supra) to escape its liability even towards the claimants.

No other point has been raised.

For the foregoing reasons, cross objections (Xobjc No. 223 CII and 224 CII of 2014) preferred by the claimants are allowed in the aforesaid terms. The appeal preferred by National Insurance Company Limited (FAO 2651 of 2013) is ordered to be dismissed. However, the appeal preferred by the United India Insurance Company Limited (FAO No. 2390 of 2013 is partly allowed in the aforesaid terms.

No orders as to costs.

(Rekha Mittal)
Judge

04.08.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No