

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

216

FAO No.1256 of 2015
Decided on : 30.10.2017

Bharti AXA General Insurance Company Ltd.

... Appellant

Versus

Smt.Santosh Devi and others

.. Respondents

FAO No.398 of 2015
Decided on : 30.10.2017

Smt.Santosh Devi and others

... Appellant

Versus

Sanjiv Kumar and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Rajbir Singh, Advocate
for the appellant (FAO No.1256 of 2015).
for respondent No.3 (in FAO No.398 of 2015)
Mr.Parminder Singh, Advocate (FAO No.398 of 2015)
for the appellants (FAO No.398 of 2015)
for respondents No.1 to 4 (FAO No.1256 of 2015).

Mr.Surinder Dagar, Advocate
for respondents No.5 and 6 (FAO No.1256 of 2015)
for respondents No.1 and 2 (FAO No.398 of 2015).

Avneesh Jhingan , J. (Oral)

The present appeals have been filed against the award dated 20.09.2014 passed by Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal').

2. FAO No.1256 of 2015 has been filed by the Insurance Company raising two issues. Firstly, the issue raised by the Insurance company is that there was contributory negligence as the deceased was

going on motorcycle and he struck the trailer from behind. Secondly, that deceased was duly governed by *The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2006* (for short 'the rules'), therefore, while awarding the compensation amount received by the claimants under the rules should have been deducted.

3. In *FAO No.398 of 2015*, the appellants (claimants) have prayed for enhancement of compensation raising two issues. Firstly that the Tribunal has not considered the take home salary, less income tax; and secondly, that multiplier of 13 has been applied whereas multiplier 15 should have been applied as the deceased was 38 years old.

4. I have heard learned counsel for the parties and perused the paper-books.

5. So far as the issue of contributory negligence is concerned, the contention raised by the learned Insurance Company has no substance. The entire case is that the motor-cycle hit trailer from behind. Learned counsel for the Insurance company states that a safe distance should have been maintained by the motorcyclist in view of the Rule 24 of the *Road and Regulations, 1989* and moreover, that trailer was parked as its tyres had burst. Learned counsel for the Insurance Company further placed reliance upon the deposition of Sanjeev Kumar RW-1, driver of the offending truck. He has placed reliance on the decisions reported as *Subhash Chand and others Vs. Satya Rani and others 2013 (3) PLR 329*, *Subhash Vs. Satya 2013 (4) PLR 329 and Raj Rani Vs. New Oriental Insurance Co. Ltd. 2009 (13) SCC 654*.

6. Learned counsel for the claimants argued that there was no contributory negligence rather, trailer was being driven in a rash and negligent manner. Driver of the trailer suddenly changed the lane and applied sudden brakes, as a result of which accident took place.

7 The averments made by the learned counsel for the Insurance company have no legs to stand. Firstly, there was an eye witness, Ishwar Dayal to the accident, who was the pillion rider and deposed as PW-3. According to his deposition, the trailer was going on the G.T. Road carrying iron rods and these iron rods were protruding out of the body of the truck. As per PW-3, trailer changed the lane and suddenly applied brakes, as a result of which, the rods hanging out of the body of the trailer pierced through the stomach of the motorcyclist. There is no evidence in rebuttal produced by the Insurance company. Even otherwise, the Insurance company is breathing hot and cold at the same time. On one side, argument raised is that if there was sudden braking, the motorcyclist should have maintained safe distance while driving and for that reliance is placed not only on the Rules but on the citations referred above. On the other hand, the reliance is being placed upon the statement of the driver, according to which, the trailer was parked as its tyres had burst due to overload.

8. So far as the first part of the contention is concerned. It is not a case where a motorcycle was going behind the trailer. It is in that eventuality that a safe distance has to be maintained. Present is a case of changing of lane by the trailer and thereafter, applying sudden brakes. In

such circumstances, it cannot be expected from the motorcyclist to maintain the distance as the distance would be result of swaying of the heavy vehicle.

9, The second limb of the argument that the trailer was parked, is not substantiated by any evidence except the statement of the driver. Very conveniently, only a part of the statement of the driver is read to state that it was parked. On reading of the statement as a whole, the driver admits that his vehicle was over-loaded and he has not denied that iron rods protruding outside the body of trailer. Not only this, even for arguments sake if it is assumed that it was parked, driver says that only half part of its trailer was parked on kaccha road and rest was on the metaled road. It is a case of a negligent parking. In such circumstances, no contributory negligence can be attributed to the driver of the motorcycle. It has not been brought on record that while carrying such a hazardous material which was protruding outside the body of the trailer, sufficient safety steps were taken by the driver of the trailer. So far as the authorities relied upon by the learned counsel for the Insurance Company are concerned, these are not applicable in the facts of the present case. As mentioned above, this is not a case where a vehicle was following another vehicle, this is a case where huge heavy vehicle changes the lane and it results into accident. The Insurance company has nowhere pleaded that the motorcycle was being driven at a very high speed. Rather, the eye witness state that it was driven at a very moderate speed.

10. So far as the contention with regard to deduction of the

compensation awarded under 'rules' is concerned, the said matter is covered by the decision of the Apex Court in case of **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others** 2016 (12) JT 409.

The relevant para No.22 of the said judgment is reproduced as under:-

“22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants / claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to “pay and other allowances” that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of “loss of income”. So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello and Patricia Jean Mahajan’s cases (supra).”

received under the Rules has to be deducted from the claim assessed by the Tribunal. The matter is remitted back to the Tribunal to quantify the compensation keeping in view the aforesaid decision.

FAO No.398 of 2015

So far as the issue raised by the counsel for the claimants for enhancement of compensation is concerned, the learned counsel for the respondents though resisted enhancement, but could not raised any serious objection.

Learned counsel for the Insurance company fairly states that the said issue is covered by the decision of the Apex Court in **Smt. Sarla Verma and others** Vs. **Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) 77.

Since the matter has already been remitted to the Tribunal in the above said case (FAO No.1256 of 2015), it is deemed appropriate that Tribunal while dealing with the remand case, will also decide the enhancement of compensation in view of the decision of the Apex Court as referred above,

Parties are directed to appear before the Tribunal on **22.12.2017**.

[Avneesh Jhingan]
Judge

30.10.2017
sd

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No