IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5059 of 2013 (O&M)
Date of Decision: 23.10.2017

Bajaj Allianz General Insurance Company Ltd.

..Appellant(s)

Versus

Bimla and others

..Respondent(s)

with

FAO No.5095 of 2013 (O&M)

Bajaj Allianz General Insurance Company Ltd.

..Appellant(s)

Versus

Kelo and others

..Respondent(s)

FAO No. 9751 of 2014 (O&M)

Kelo and others

..Appellant(s)

Versus

Swarup Kumar Mishra and others

..Respondent(s)

FAO No. 6782 of 2015 (O&M)

Bimla and others

..Appellant(s)

Versus

Swarup Kumar Mishra and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vishal Aggarwal, Advocate
for the appellants in FAO Nos. 5059 and 5095 of 2013 and
for respondent no.3 in FAO No. 9751 of 2014 and
FAO No.6782 of 2015.

Mr. S.K. Verma, Advocate
for the appellants in FAO-9751-2014 and FAO-6782-2015.

Mr. Amrinder Singh Sidhu, Advocate in FAO-5059-2013,
FAO-5095-2013 & FAO-9751-2014 and
Ms. Vandana Malhotra, Advocate in FAO-6782- 2015
for ICICI Lombard General Insurance Company Ltd.

*****

ANITA CHAUDHRY, J.

Delay in filing and re-filing the appeal(s) condoned.

These are four appeals arising out of an award dated 18.08.2012 passed by the Motor Accident Claims Tribunal, Jind (hereinafter to be referred as the Tribunal) .

Two appeals have been filed by Bajaj Allianz General Insurance Co. Ltd. disputing their liability while the other two appeals have been filed by the claimants seeking enhancement. I propose to dispose off all the appeals vide this common order as they arise out of the same accident.

Two claim petitions were filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter to be referred as the Act). Deceased Balwan and Rafiq were travelling in a three-wheeler. The accident had taken place in Orissa. A truck bearing registration no. OR-11J-4399 came at a high speed and struck against the three-wheeler resulting in injuries to all the occupants of the three-wheeler. Later they succumbed to the injuries.

Kelo and others claimed compensation for the death of Balwan who was stated to be a labourer. His income was stated to be Rs.3,300/- per month. The claimants were the widow, three minor children and the parents of the deceased. The Tribunal took the income to be Rs.3,300/- per month and deducted 1/3rd towards personal expenses and applied the multiplier of 13 and awarded compensation of Rs.3,43,200/-. Besides that Rs.2,000/- was allowed for funeral expenses, Rs.5,000/- for loss of consortium and Rs.2,500/- for loss of estate as provided in the Second Schedule of the Act. A sum of Rs.20,000/- was allowed for shifting the dead body from West Bengal to Haryana. A total sum of Rs.3,72,700/- was allowed.

With respect to the claim filed by Bimla and other legal heirs, the Tribunal noted that the deceased Rafiq was 50 years old at the time of the accident. His income was taken as Rs.3,300/- per month being a labourer and 1/3rd was deducted towards personal expenses and multiplier of 11 was applied to calculate the compensation of Rs.2,90,400/-. Besides that Rs.2,000/- was allowed for funeral expenses, Rs.5,000/- for loss of consortium and Rs.2,500/- for loss of estate as provided in the Second Schedule of the Act. Rs.20,000/- was allowed for transportation, raising the total to Rs.3,19,900/-. While apportioning the liability, the Tribunal did note that the claimants had alleged that the accident was caused by the negligence of the truck driver but it chose to direct both the insurance companies to share the compensation as the accident had occurred when both the vehicles were in use.

FAO-5059 and 5095 of 2013

Taking up the appeals filed by the insurance company first, the submission on behalf of the insurance company namely M/s. Bajaj Allianz General Insurance Co. Ltd. is that the allegations in the claim petition were that the accident was caused by the truck driver when it came and struck against the three-wheeler resulting in number of deaths but the Tribunal had placed the liability of payment of half the compensation upon them. It was urged that the insurance company was only to indemnify the insured and the insured had died in this accident and his legal heirs were not impleaded as a party and without their addition, the liability could not be placed upon them. It was also urged that the Tribunal got swayed by the fact that the three-wheeler carried four passengers and was overloaded, therefore, their company was also held to be liable. It was urged that it was not the case of the claimants that their driver was at fault and the FIR is in local language but its translation is available in lower Court record and it can be seen that the truck came and struck against the three-wheeler and they should be discharged from the liability and the responsibility of payment of the remaining compensation should be put on the owner, driver and insurer of the truck.

The submission on behalf of ICICI Lombard General Insurance company is that the three-wheeler was overloaded and the negligence is not an issue in a petition filed under Section 163-A of the Act and the Tribunal had rightly apportioned the liability and placed it on both the insurance companies.

The translation of the FIR is available on the lower Court record and was exhibited as Ex. P-4. A reading of it makes it clear that it is the truck driver who came and struck against the three-wheeler. There were four occupants in the three-wheeler and the driver was also injured. It also states that it was the fault of the truck driver. In the claim petition the claimants had impleaded the owner and the insurance company of the truck and had only impleaded the insurance company of the three-wheeler. The legal heirs of the owner of the three-wheeler were not impleaded. The evidence which had come on record also speaks about the negligence of the truck driver. The legal heirs of the owner of three-wheeler were not impleaded, therefore, the insurance company could not be made liable. Even otherwise there was no reason for the Tribunal to pass on the liability of 50% on the insurance company with whom the three-wheeler was insured. The finding of apportioning the liability upon the appellant i.e. Bajaj Allianz General Insurance Co. Ltd. was incorrect and is set aside and it is held that the compensation was to be paid by ICICI Lombard General Insurance Co. Ltd.

Both the appeals (FAO-5059 and 5095 of 2013) are allowed.

FAO-6782-2015

The submission on behalf of the appellants Bimla and others was that the Tribunal had rightly taken the income of Rafiq to be Rs.3,300/- per month but considering the number of claimants the deductions should not have been 1/3rd and it had wrongly applied the multiplier of 11 and if the Second Schedule is seen when the age is 50, the multiplier should have been 13. It was also urged that Tribunal had wrongly taken the age to be 50 years and they were entitled to a sum of Rs.1 lac for loss of consortium and enhanced amount for funeral expenses and loss to the estate.

The submission on the other hand is that since the petition had been filed under Section 163-A of the Act, therefore, it is the Second Schedule which has to be followed and the deduction would be 1/3rd and the general damages are given in the Second Schedule. It was urged that in the postmortem report the age was mentioned as 50 years, therefore, the Tribunal had considered the age of the deceased as 50.

The claimants failed to lead evidence to prove the age of Rafiq. In the postmortem report the age was mentioned as 50 years as was rightly considered but the multiplier applicable would 13. The calculation will have to be made again but the deduction towards personal expenses would be 1/3rd. As per the Second Schedule, the compensation would be Rs.2,200 x 12 x 13 = Rs.3,43,200/-. The addition towards funeral expenses would be Rs.2,000/-, a sum of Rs.5,000/- is awarded for loss of consortium and a sum of Rs.2,500/- is awarded for loss of estate and I would award Rs.25,000/- for transportation, which raises the total to Rs.3,77,700/-. The Tribunal had allowed Rs.3,19,900/-, which would be deducted and the entire amount would be payable by the ICICI Lombard General Insurance Co. Ltd. with interest @ 6% from the date of filing of appeal till realization.

FAO-9751-2014

The submission on behalf of the appellant was that Balwan was 45 years old and the Tribunal had applied the multiplier of 13 which should have been 15 and the deduction towards personal expenses should have been $1/10^{th}$ since the number of claimants was over five. The counsel had also submitted that they were entitled to higher amount for transportation and for loss of consortium and loss of love and affection for the children.

The submission on behalf of the insurance company was that since the claim petition had been filed under Section 163-A of the Act, it is the Second Schedule which has to be followed. It was conceded that the multiplier has to be as per the Second Schedule.

As per the Second Schedule, the multiplier applicable would be 15 since the deceased was 45 years old. The Tribunal had applied the multiplier of 13, therefore, the calculations will have to be made again. The deduction towards personal expenses would be $1/3^{rd}$ as per Second Schedule. Making the calculations again, the compensation would be Rs. 2,200/- x 12 x 15 = Rs.3,96,000/-. The amount which has to be added for the general damages would be Rs.2,000/- for funeral expenses, Rs. 5,000/- for loss of consortium and Rs.2,500/- for loss of estate and Rs.25,000/- for transportation, which raises the total to Rs.4,30,500/-. The Tribunal had allowed Rs.3,72,700/-, which would be deducted and the entire amount would be paid by ICICI Lombard General Insurance Co. Ltd. with interest @ 6% from the date of filing of appeal till realization.

Both the appeals (FAO-6782-2015 and FAO-9751-2014) are partly allowed.

October 23, 2017 **(ANITA CHAUDHRY)**
sunil **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No