In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:28.11.2017

FAO No. 1951 of 2016(O&M)

New India Assurance Company Limited

---Appellant

vs.

Harpreet Kaur and others

---Respondents

FAO No. 1952 of 2016(O&M)

New India Assurance Company Limited

---Appellant

vs.

Rajni Bala @ Usha Rani and others

---Respondents

FAO No. 1954 of 2016(O&M)

New India Assurance Company Limited

---Appellant

vs.

Rajni Bala @ Usha Rani and others

---Respondents

FAO No. 1821 of 2016(O&M)

Rajni Bala @Usha Rani

---Appellant

vs.

Wazir Chand and others

---Respondents

FAO No. 2991 of 2016(O&M)

Rajni Bala @Usha Rani and others

---Appellants

vs.

Wazir Chand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Vinod Gupta, Advocate
for the appellant in FAO Nos. 1951, 1952, 1954 of 2016
for respondent No. 3 in FAO-2991 of 2016

Mr. Ashok Jindal, Advocate
for the appellants in FAO-2991 of 2016
for respondent Nos. 1 to 5 in FAO-1951 of 2016

Mr. Ankit Duggal, Advocate
for respondent Nos. 1 and 2 in FAO-1821 of 2016

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1951, 1952, 1954, 1821 and 2991 of 2016 as these have emerged out of the same accident dated 13.11.2013 whereby compensation has been awarded in regard to death of Hardam Singh, Rajesh Kumar Singla and damage to car No. PB-03-X-7312.

FAO Nos. 1951, 1952 and 1954 of 2016 have been filed by the New India Assurance company, FAO No. 1821 of 2016 has been filed for enhancement of compensation qua damage to the vehicle in question whereas FAO No. 2991 of 2016 has been filed by the claimants seeking enhancement of compensation in regard to death of Rajesh Kumar Singla.

FAO No. 1951 of 2016(O&M)
FAO No. 1952 of 2016(O&M)
FAO No. 1954 of 2016(O&M)

A brief backdrop of the case is that Rajni Bala and others filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short “the Act') claiming compensation on account of death of Rajesh Kumar

Singla. Rajni Bala @ Usha Rani filed another application for compensation in respect of damage to Indica Car bearing No. PB-03-X-7312 owned by her late husband Rajesh Kumar Singla. Another application under Section 166 of the Act was filed by Harpreet Kaur and others claiming compensation in regard to death of Hardam Singh, one of the occupants of the aforesaid Indica car. As per allegations of the claimants, on 13.11.2013, Rajesh Kumar Singla alongwith Hardam Singh was going to Patiala from village Machhana in Indica car No. PB-03-X-7312 for donating blood to a dengu patient. Car was driven by Rajesh Kumar Singla on extreme left side of the road. Rajesh Bansal and Pali Singh were following them on their vehicle. At about 4.10 a.m. when they reached near Bharti Petrol Pump Khudi Khurd, truck No. PB-13K-9813 struck with Indica car without giving any indication and respondent No. 1 (driver of the truck) dragged the car alongwith its occupants. Rajesh Kumar Singla and Hardam Singh died at the spot. A case was registered in police station, Tapa District Barnala on the statement of Sukhbir Singh, father of Rajesh Kumar Singla.

Counsel for the insurance company has assailed findings of the Tribunal on issue No. 1 attributing rash and negligent driving to truck bearing No. PB-13K-9813. To bring home his contention, it is argued that Rajesh Bansal, alleged eye witness to the occurrence neither lodged report with the police nor recorded his statement as a witness in the criminal proceedings, as stated by ASI Avtar Singh, Police Lines, Barnala RW3. It is argued with vehemence that Rajesh Bansal has been introduced later to support cause of the claimants. In the alternative, it is argued that in case this Court affirms findings of the Tribunal that Rajesh Bansal CW-1 was present at the spot at the time of accident, facts elicited in his cross examination would go a long way to prove that accident was caused due to sole negligence of driver of the car, therefore, driver, owner and insurer of truck cannot be fastened with liability to pay compensation. For this purpose, he has pointed out towards cross examination of Rajesh Bansal by counsel representing the insurance company before the Tribunal.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal that Wazir Chand, driver of the truck is author of the accident. It is argued that on the basis of FIR lodged by Sukhbir Singh father of Rajesh Kumar Singla, due investigation was conducted and Wazir Chand was put to trial for committing offence punishable under Sections 279, 304-A of the Indian Penal Code, as deposed by ASI Avtar Singh RW3. According to counsel, the insurance company cannot be allowed to blow hot and cold in the same breath by contending that Rajesh Bansal was not present at the spot but on the other hand, relying upon his testimony to contend that accident was caused due to rash and negligent driving of car in question by Rajesh Kumar Singla (since deceased).

There is no dispute between the parties that in the accident in question, two vehicles i.e. Indica car No. PB-03-X-7312 driven by Rajesh Singla and truck bearing No. PB-13K-9813 driven by Wazir Chand were involved on the fateful night of 13.11.2013. It is also not denied that both the vehicles were on their way from Bathinda towards Barnala. The claimants examined Rajesh Bansal to prove the accident. He tendered into evidence his affidavit Ex. CW1/A by way of examination in chief. In para

1 of the affidavit, he has given a detailed account of the occurrence and stated that accident took place due to rash and negligent driving of truck No. PB-13K-9813 by Wazir Chand, its driver. However, he has not explained as to how the truck driver was rash and negligent in causing the accident.

In his cross examination by counsel representing the insurance company before the Tribunal, he has deposed to the following effect:-

> "At the time of occurrence, the truck was moving towards Barnala Side from Bathinda side. Car of Rajesh Kumar Singla was also going towards Barnala side. The occurrence took place at the time when Rajesh Kumar Singla was trying to overtake truck No. PB-13K-9813. Right rear side of truck and left front side of the car had struck against each other."

A plain reading of the aforesaid extract leaves no manner of doubt that the truck was ahead of the car driven by deceased Rajesh Kumar Singla. The very fact that the car driver while overtaking the truck, struck the right rear side of the truck with left front side of the car, goes to show that the accident took place when the car coming from behind was in the process of overtaking the truck going ahead. Sukhbir Singh @ Makhan Lal CW2 author of the FIR has deposed that the truck dragged the car with its occupants namely deceased Hardam Singh and Rajesh Kumar Singla. In his cross examination, he has deposed "when I reached there, the car alongwith occupants thereof, was lying entangled behind the truck".

On due consideration of the aforesaid extract from testimony of Rajesh Bansal, right rear side of the truck and left front side of the car struck against each other while the car was overtaking the truck. However, ordinarily after striking, the car was required to deflect/swerve towards further right. There is nothing in testimony of Rajesh Bansal that after striking of the car and truck, the truck driver took the truck towards right side. There is no explanation as to how the car got entangled behind the truck. In the circumstances, it can be safely assumed that after initial striking of two vehicles, something more happened and as a result the car got entangled in the truck and dragged by the truck alongwith its occupants for some distance. The driver of the truck did not appear in the witness box to depose. As both the occupants of car died on the spot, truck driver was the best person to explain as to the circumstances under which the accident took place. As such, an adverse inference is to be drawn against the truck driver that he is also responsible for the accident. In view of the above, it can be safely held that accident was caused due to contributory negligence of drivers of both the vehicles. Since initial negligence can be attributed to driver of the car for striking against right rear side of the truck while overtaking, in the fitness of things, negligence to the extent of 60% shall be attributed to the car driver and 40% to driver of the truck. Findings recorded by the Tribunal on issue No. 1 are modified accordingly.

To be fair to the insurance company, counsel raised a plea that testimony of Rajesh Bansal is not worthy of consideration as he neither reported the matter to the police nor has been cited as a witness of the prosecution. Rajesh Bansal has stated that he had informed the police. Testimony of Rajesh Bansal cannot be discarded simply because the police has either not cited him as a witness of the prosecution or recorded his statement under Section 161 Cr.P.C. However, counsel for the insurance company has failed to point out any materials brought forth in examination of Rajesh Bansal that he is not a truthful witness or came forward being interested in success of the claimants. There is nothing on record suggestive of the fact that Rajesh Bansal is a relative of the claimants much less a beneficiary, if compensation is allowed qua death of Rajesh Kumar Singla and Hardam Singh.

For the foregoing reasons, the appeals filed by the insurance company are partly allowed in the aforesaid terms. The insurance company shall be liable to pay compensation only to the extent of 40% qua death of Rajesh Kumar Singla and damage to the vehicle but it would be liable to pay entire compensation qua death of Hardam Singh as claimants of that case have the liberty to seek compensation from either of the joint tort feasors.

FAO No. 2991 of 2016(O&M)

The Tribunal assessed compensation to the tune of Rs. 33,25,000/- on account of death of Rajesh Kumar Singla, detailed hereunder:-

Annual income of the deceased	Rs. 2,80,000/-
Multiplier	15
Deduction for personal expenses	1/4th
Loss of dependency	Rs. 2,10,000 x 15= 31,50,000/-
Loss of consortium	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-
Loss of love and affection	Rs. 25,000/-
Loss of estate	Rs. 25,000/-

Counsel for the claimants has submitted that Rajesh Kumar Singla was doing business in the name and style of M/s Guru Nanak Iron

Store, Sangat Kanchyian. It is argued that the claimants proved on record income tax returns Exs. C-5 and C-6. In the income tax return for the assessment year 2011-12, gross total income is Rs. 3,47,434/- and after making deduction under Chapter VI-A of Rs. 66,660/-, taxable income is Rs. 2,80,770/- on which tax including education cess to the extent of 12,436/- has been paid. In the latest income tax return Ex. C-6 filed on 30.8.2013, gross total income is Rs. 3,68,294/- and taxable income is Rs. 3,43,290/- with liability to pay tax including education cess to the tune of Rs. 14,759/-. Liability to pay interest is Rs. 990/-.

The Tribunal has not assigned any reason to ignore the latest income tax return Ex. C-6. Taking into consideration the gross total income of Rs. 3,68,294 minus tax liability of Rs. 14,759/-, annual income of the deceased comes to Rs.3,53,535/- for computing loss of dependency. The claimants shall be entitled to increase in income for future prospects to the extent of 25% as the deceased was born on 1.7.1973, thus, more than 40 years at the time of death in November 2013. Multiplier and deduction applied by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. 3,53,535 x 15 = 53,03,025 + 13,25,756 (25%) = 66,28,781 – 16,57,195 (1/4th) = Rs.49,71,586/-.

Under conventional heads, claimants shall be entitled to following compensation in the light of judgment of Hon'ble the Supreme Court of India **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**:-

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. 50,41,586/- and the additional amount is Rs. 17,16,586/- (50,41,586 – 33,25,000). The claimants shall be entitled to only 40% of the compensation assessed by the Tribunal and additional compensation allowed by this Court. If the insurance company has paid more than that of entitlement of the claimants, it would be at liberty to file an appropriate application before the Tribunal for recovery of excess amount.

The appeal is partly allowed in the aforesaid terms.

FAO No. 1821 of 2016

With regard to damage to car owned by Rajesh Kumar Singla (since deceased), the Tribunal has allowed compensation to the tune of Rs. 1,00,000/- with the following observations:-

> "The claimant has stated during cross examination that she has no record regarding purchase of car. She further admitted that she does not know at what price the car (sic). Claimant has not examined surveyor, who had made a assessment report regarding the damage caused in the said accident of the car. So, considering the circumstances of the case, this court is of the view that an amount of Rs. 1,00,000/- is a reasonable and just compensation to be paid to the claimant by respondent No. 3 in the given set of circumstances."

Counsel representing the insurance company would urge that with regard to damage to third party property, the insurance company cannot be fastened with liability more than statutory limit of Rs. 6000/- as provided in the Act.

Counsel for the claimant, in reply, has refuted contention of counsel for the insurance company by relying upon GR-39 that deals with third party property damage (TPPD cover).

GR 39 says:-

"GR.39. Third Party Property Damage (TPPD) Cover

A. Limits of cover for Third Party Property Damage Cover (other than for goods carried in the insured vehicle) under Liability Only policies and under Section II – 1(ii) of various Package policies are as per the followiing table:- (this provision shall not apply to vehicles ratable under Class G- Tariff for Motor Trade-Internal Risks)

CLASS OF VEHICLES		TPPD COVER (RS.)
1	Commercial Vehicles (Excluding Three wheelers, Taxis and motorized two wheelers ratable under tariff for Commercial vehicles)	7.50 lakhs
2	Commercial Vehicles-Three Wheelers and Taxis	7.50 lakhs
3	Private Cars	7.50 lakhs
4	Motorized Two Wheelers -Private and Commercial	1.00 lakhs

B. However, the insured can at the inception of the policy, opt to restrict to the TPPD cover to the statutory limit of Rs. 6000/- as provided in the M.V. Act. In such an event, the base TP premium applicable (before any loading/discount) may be reduced by Rs. 200/-, Rs. 150/-, Rs. 100, and Rs. 50/- for Class 1, 2, 3 and 4 as above respectively."

Perusal of clause B under GR 39 makes it evident that the insured can at the inception of the policy opt to restrict to the TPPD cover to the statutory limit of Rs. 6000/- as provided in the MV Act. In such an event, the base TP premium applicable (before any loading/discount) may be reduced b y Rs. 200/-, Rs. 150/-, Rs. 100, and Rs. 50/- for Class 1, 2, 3 and 4 as above respectively.

In the case at hand, counsel for the insurance company has failed to point out any materials that the insured restricted TPPD cover to statutory limit of Rs. 6000/- or TP premium applicable was reduced to the extent of Rs. 200/- as the vehicle in question is a commercial vehicle. In this view of the matter, contention raised by the insurance company is not meritorious and liable to be rejected.

Counsel for the claimant has not disputed factual findings recorded by the Tribunal. The claimant produced on record survey report Ex. C-7 whereby total loss has been assessed to the extent of Rs. 2,25,000/-, by deducting salvage value of wreckage to the tune of Rs. 50,000/-, liability has been limited to the tune of Rs. 1,75,000/-. Admittedly, the claimant did not examine Gurjinder Singh from G.S. Associates to prove the report Ex. C-7. However, it remains a fact that the car was 2010 model and registered in the name of Rajesh Kumar Singla on 7.6.2011. It appears that Rajesh Kumar Singla purchased a new car of model 2010. Taking into consideration model of the car, date of accident and report prepared by the surveyor, it can be safely concluded that there was damage to the extent of Rs. 1,50,000/-. In view of findings attributing contributory negligence to the extent of 60% to Sh. Rajesh Kumar Singla, the claimant shall be entitled to only 40% of compensation assessed by this court i.e. Rs. 60,000/-. The appeal is disposed of accordingly.

Before parting with this order, it is noted that counsel for the claimants qua death of Hardam Singh has informed that claimants have filed a separate appeal for enhancement, fixed for some other date. That appeal would be decided independently, in accordance with law.

(Rekha Mittal)
Judge

28.11.2017
paramjit

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