IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No.5006 of 2014 (O&M)
Date of Decision : 25.09.2017

Shri Ram General Insurance Company Ltd. ....Appellant

versus

Smt. Sudesh Devi and Ors. ....Respondents

FAO No.10487 of 2014 (O&M)

Smt. Sudesh Devi and Anr. ....Appellants

versus

Sewa Singh and Ors. ....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rajbir Singh, Advocate
for the appellant in (FAO-5006-14) and
for respondent No.3 in (FAO-10487-2014).

Mr. Suresh Ahlawat, Advocate
for the appellant in (FAO-10487-2014) and
for respondents No.1 and 2 in (FAO-5006-2014).

RAJBIR SEHRAWAT, JUDGE (ORAL)

As per office report, respondent No.3 already stood served along with respondents No.5 and 6. Respondent No.4 has also been served twice through his wife. However, nobody has put in appearance on behalf of respondents No.4 so far.

Respondents No.4 is proceeded ex parte in FAO No.5006 of 2014.

Service is complete.

CM-28854-CII-2014 in
FAO-10487-2014

This is an application for condonation of delay of 65 days in filing the present appeal.

Notice of the application is given to the counsel for the

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respondent-Insurance Company.

He has no objection if the delay is condoned.

Keeping in view the no objection by learned counsel for the respondent-Insurance Company and the reasons mentioned in the application, same is allowed and the delay in filing the appeal is condoned.

MAIN APPEALS

This order shall disposed of two appeals i.e FAO No.5006 of 2014 filed by the Insurance Company and FAO No.10487 of 2014 filed by the claimants.

The facts as pleaded in brief are that on 18.03.2012, at about 6.00 P.M., Basant Kumar along with other family members were returning after worship from Mata Bhanbhori Mandir. When they reached near Bhanbhori Kapro River Bridge, a vehicle TATA 407 bearing registration No.HR-06GA-0122 came in front of the three wheeler in which Basant Kumar and other family members were travelling. The TATA 407 vehicle hit in front of the three wheeler. As a result, three wheeler turned turtled. The occupants of the three wheeler sustained injuries. The said Basant Kumar was taken to hospital; where he was reported by the doctors as brought dead. The parents of deceased-Basant Kumar filed a claim petition, claiming compensation on account of death of the said-Basant Kumar. It was further pleaded that a criminal case was also registered regarding this incident at Police Station Narnaund against respondent No.1; who was facing trial for causing this accident.

Despite notice, respondent No.1 did not appear and was proceeded ex parte. Respondent No.2; the owner did file the written

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statement and controverted the version given by the claimants. The involvement of the vehicle in the accident was altogether denied.

Respondent No.3, the Insurance company of the offending TATA-407 vehicle, also filed written statement taking usual preliminary objections. On merits, it was claimed that the driver of the offending vehicle was not holding the valid driving licence on the date of accident and that there was violation of terms and conditions of the Insurance Policy. Lastly, the claim petition was alleged to be collusive between the petitioners and respondents No.1 and 2. Respondents No.4 and 5, the driver and owner of three wheeler No.HR56-7521; also filed their written statement and claimed that they are not necessary parties in the case. It was further pleaded that it was the offending TATA-407 vehicle, which caused the accident due to its rash and negligent driving.

The parties led their evidence.

The respondents did not adduce any oral evidence. However, some documents were tendered on their behalf.

After considering the evidence and pleadings of the parties, the Tribunal awarded an amount of Rs.4,10,000/- as compensation to the claimants. To arrive at this figure, the Tribunal had taken the notional dependency on the deceased as Rs.2000/- per month and the multiplier of 15 was applied. Still further Rs.50,000/- was awarded under the all conventional heads towards loss of love and affection, funeral expenses and last rites and consortium etc.

The liability to make the payment of above said compensation was fixed upon the Insurance Company. It was recorded by the Tribunal

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that the Insurance company has failed to lead any evidence to rebut the validity of the licence on the date of accident.

While arguing the case of the appellant-Insurance company; the counsel has argued that the licence produced on record does not show that it was valid on the date of accident. The second contention is that no permit has been placed on record by the owner, which entitled him to ply this vehicle as a commercial vehicle; since the offending vehicle happens to be a commercial vehicle; as per its gross weight and as per the definition of commercial vehicle given in the Motor Vehicles Act.

The arguments of the learned counsel for the appellant-Insurance Company, so far as the driving licence is concerned, is liable to be rejected because the licence is stated to have been issued on 09.03.2005 and the last endorsement thereon regarding the validity is up to 06.04.2015. There is no entry or endorsement on this document; which is exhibited as R-2/the documents of respondents, to the effect that this driving licence was held in abeyance, suspended or not renewed during this period of the interregnum. The respondent-Insurance Company has failed to prove by leading any evidence to show that it was not a valid licence or that it remained suspended or unrenewed for any period in the meantime. The Tribunal has rightly arrived at this conclusion that since the Insurance company failed to substantiate its plea regarding the invalidity of driving licence; due to not examining any witness of the Licensing Authority, Agra, therefore, no fault can be found with the driving licence of the driver of the offending vehicle. There is no perversity in the finding recorded by the Tribunal.

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So far as the next contention of the counsel for the appellant-Insurance company is concerned; there appears to be force in the argument raised by the counsel for the Insurance Company. Although the owner has produced the fitness certificate of the offending vehicle as Ex. R-1, however, he has not placed on record the permit required for the vehicle to ply on the road. Section 66 of the Motor Vehicle Act prescribes that the commercial vehicle could not have been taken on road unless there is a valid permit prescribing the conditions of use as commercial vehicle. The owner of the vehicle has abjectly failed to prove any permit for the offending vehicle at the relevant time.

Therefore, this finding recorded by the Tribunal is reversed and it is held that there is nothing in evidence on the file that the vehicle in question was having necessary permit to ply on the road. Accordingly the finding of the Tribunal in this regard is reversed.

Resultantly the Insurance-Company shall be at liberty to recover the compensation amount from the owner of the offending vehicle.

In the second appeal filed by the claimants i.e. FAO No.10487 of 2014, the claimants have relied upon the judgement of the Hon'ble Supreme Court rendered in ***Kishan Gopal and another Vs. Lala and Others, 2014 (1) PLR 276*** to contend that in case of the deceased in the present case the notional contribution should have been taken at Rs.30,000/- per annum and the multiplier applicable in the case was required to be 15. So far as the multiplier is concerned, there is no dispute. The multiplier of 15 has already been applied by the Tribunal.

However, in view of the above judgement of the Supreme Court in

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case of ***Kishan Gopal*** (supra) the notional contribution of the deceased is required to be taken at Rs.30,000/- per annum. Accordingly the loss of dependency to the claimants is assessed as Rs.4,50,000/- (30,000 x 15). The amount of compensation on account of conventional heads is retained at Rs.50,000/-; as has been awarded by the Tribunal. As a result thereof, the claimants are held entitled to a total amount of Rs.5 lac in this case. The interest on this amount is retained as was awarded by the Tribunal.

In view of the above, the award of the Tribunal is modified to the above extent.

The appeal filed by the Insurance company is partly allowed granting it the recovery rights against the owner.

The appeal filed by the claimants is allowed enhancing the compensation in the above said terms.

Both the above said appeal are, accordingly decided in above terms.

25th September, 2017 **(RAJBIR SEHRAWAT)**
Manju **JUDGE**

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

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