IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5841 of 2013
Date of Decision.08.12.2017

Smt. Santosh Yadav and another ....Appellants

Vs

Pardeep Kumar (since deceased through LRs) and others ....Respondents

2. **FAO No.6780 of 2015**

Savitri Devi and another ....Appellants

Vs

Pardeep Kumar (since deceased through LRs) and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurinder Pal Singh, Advocate
for the appellants in FAO No.5841 of 2013.

Ms. Supriya Garg, Advocate
for the appellants in FAO No.6780 of 2015.

Mr. R.K. Gupta, Advocate
for the insurance company.

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AMIT RAWAL J.(ORAL)

C.M. No.21195-CII of 2015 in FAO No.6780 of 2015

The application for impleading the legal representatives of deceased-respondent No.1 is allowed subject to all just exceptions and the legal representatives are brought on record.

Registry is directed to carry out amendment in the memo of parties.

Main cases

This order of mine shall dispose of two appeals bearing Nos.5841 of 2013 and 6780 of 2015 for enhancement of compensation for death of one Aryan, aged 21 years and Vikas @ Vicky, aged 22 years at the time of accident. The claimants in both the cases are parents.

Though both the claim petitions arose out of the same accident but separate awards have been passed by different Motor Accident Claims Tribunal. The accident occurred on 10.08.2011 when both the aforementioned deceased persons along with Yashavi @ Yashi were travelling on motor cycle and a Balero vehicle bearing registration No.RJ-32-UA-1209 being driven rashly and negligently by respondent No.1 hit against their motorcycle, resulting into death of Aryan and Vikas @ Vicky.

Mr. Gurinder Pal Singh, learned counsel appearing on behalf of the appellants in FAO No.5841 of 2013 submits that the deceased-Aryan was not driving the motor cycle and therefore, negligence attributed *viz-a-viz* 25% should have been fastened only upon the driver of the motor cycle and not on the pillion rider. It is case of composite negligence and therefore, recovery rights to the extent of 25% should have been given to the insurance company of the Balero vehicle bearing registration No.RJ-32-UA-1209 against the owner of the motor cycle bearing registration No.HR-35F/8546. The choice of multiplier of 15 for a 21 years old boy is wrong approach whereas it should have been 18. It did not provide anything for future prospects, much less, the amounts of ₹20,000/- provided towards transportation and last rites and ₹10,000/- for loss of consortium are on lower side, thus urges this Court for modification of the award.

Ms. Supriya Garg, learned counsel appearing for the appellants in FAO No.6780 of 2015 refuted the contention of Mr. Gurinder Pal Singh on the premise that the deceased namely Aryan was also aware of the fact of triplet riding yet he accompanied the aforementioned persons, therefore, it is a case of composite negligence, thus, the finding of the Tribunal cannot be tinkered with.

As regards the quantum, she submits that the deceased-Vikas was a student of final semester of Electronic and Communication Engineering and stated to be earning ₹15,000/- per month by doing part time job. Therefore, the income of ₹8000/- per month as assessed by the Tribunal is on lower side, thus, the award passed by the Tribunal requires modification.

Mr. R.K. Gupta, learned counsel appearing on behalf of the insurance company submits that he does not deny the contention of Mr. Gurinder Pal Singh *viz-a-viz* the composite negligence.

I have heard learned counsel for the parties and appraised the paper book. The law of composite negligence is no longer *res integra* in view of the finding rendered in paragraph 18 of the Hon'ble Supreme Court in ***Khenyei Vs. New India Assurance Co. Ltd. and others 2015(9) SCC 273***, which reads as under:

> *"18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tort feasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle - trailor-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailor-truck the amount to the aforesaid extent in the execution proceedings. Had there been no*

determination of the inter se liability for want of evidence or other joint tort feasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law. What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award"

Concededly, the deceased-Aryan was not driving the motor cycle, therefore, in my view, the Tribunal ought not to have ordered for deduction to the extent of 25% *viz-a-viz* the amount of compensation awarded to the claimant i.e. parents of the deceased-Aryan, as it was a case of composite negligence. Resultantly, the finding given by the Tribunal to that extent is hereby set aside with a rider that the insurance company of the Balero vehicle shall have the right to recover the amount to that extent from the owner/insurer of the motor cycle, in case the same is insured.

Now qua enhancement of compensation in FAO No.5841 of 2013, I will take the income of the deceased as ₹8000/- per month, provide an increase of 40% on the same towards future prospects, apply a deduction of one half for personal expenses and adopt a multiplier of 18 to assess the loss of dependency as ₹12,09,600/-. I will further add to it ₹15,000/- towards funeral expenses and ₹15,000/- for loss of estate.

In all, the compensation payable shall be ₹12,39,600/-. The amount in excess over what has already been provided by the Tribunal i.e. ₹7,50,000/- without any deduction of 25%, shall also attract interest @6% from the date of filing of the appeal till realization. The enhanced amount shall be distributed equally between the claimants. In view of finding rendered above *viz-a-viz* liability, the claimants shall be entitled to full amount without any cut of 25% towards composite negligence as was held by the Tribunal. The liability to pay the compensation shall be upon insurance company of the Balero vehicle which shall have right to recover the amount to the extent of 25% from the owner/insurer of the motor cycle.

As regards enhancement of claim in FAO No.6780 of 2015 on account of death of one Vikas @ Vicky, in my view, there is no scope for enhancement, for, in view of the ratio decidendi culled out by Hon'ble Supreme Court recently in ***National Insurance Company Ltd. Vs. Pranay Sethi and another*** passed in Special Leave Petition (Civil) No.25590 of 2014 on 31.10.2017, the future prospects in case of self-employed or fixed wages have been provided to the extent of 40% for a person below 40 years whereas the Tribunal has provided future prospects to the extent of 50%, which is not correct law. Moreover, the conventional heads i.e. loss of estate and loss of funeral expenses have been fixed as ₹15,000/- each. Therefore, if I calculate the compensation afresh, the same would be less than what has already been provided by the Tribunal.

In view of the aforementioned, the appeal filed by the appellants-claimants in FAO No.5841 of 2013 is allowed to the extent and the appeal filed by the appellants-claimants in FAO No.6780 of 2015 is dismissed.

(AMIT RAWAL)
JUDGE

December 08, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes