In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:1.9.2017

FAO No. 4257 of 2016(O&M)

Deepak Ghai and another

---Appellants

vs.

TATA AIG General Insurance Company Limited and others

---Respondents

FAO No. 6434 of 2016(O&M)

TATA AIG General Insurance Company Limited

---Appellant

vs.

Rekha Rani and others

---Respondents

FAO No. 529 of 2017(O&M)

Rekha Rani and others

---Appellants

vs.

Parveen Kumar and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.Ajeetpal S.Pakka, Advocate
for the appellants in FAO- 4257 of 2016
Mr. Diwan S.Adlakha, Advocate
for the appellants in FAO No. 529 of 2017
for respondent Nos. 2 to 5 in FAO-4257 of 2016
Mr. Rajesh K.Sharma, Advocate
for the insurance company.

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Rekha Mittal, J.

This order will dispose of FAO Nos. 4257 and 6434 of 2016 and 529 of 2017 as these have emerged out of the same award dated 29.4.2016 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari (in short "the Tribunal").

FAO No. 4257 of 2016

The owner and driver of the offending vehicle have preferred the appeal to express their grievance qua findings of the Tribunal on Issue No. 3 whereby the insurance company has been conferred with right of recovery after satisfying claim of the victims, on the basis of findings that driver of the offending vehicle was not holding a valid driving licence for want of endorsement of transport on the licence permitting driving of a scooter/motor cycle, tractor, car/jeep.

There is no denial that gross weight of the vehicle in question is 2180 Kgs. which is less than the weight of a vehicle that falls in the category of light motor vehicle, defined in Section 2(21) of the Motor Vehicles Act, 1988 (in short "the Act"). Counsel for the insurance company is not in a position to support findings of the Tribunal on Issue No. 3 in the light of enunciation laid down by Hon'ble the Supreme Court in the latest judgment **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731.**

In view of authoritative enunciation laid down by Hon'ble the Apex Court, findings of the Tribunal on Issue No. 3 holding in favour of the insurance company that the driver was not possessing a valid driving licence cannot be allowed to sustain and liable to be set aside. As driver of the offending vehicle possessed a valid licence to drive the vehicle in question, Issue No. 3 is answered against the insurance company and in favour of the claimants. Consequently, findings of the Tribunal conferring recovery rights in favour of the insurer against the driver and owner of the offending vehicle are set aside. Accordingly, the appeal is decided in favour of the appellants in the aforesaid terms.

FAO Nos. 6434 of 2016 and 529 of 2017

The Tribunal assessed income of the deceased at Rs. 10,000/- per month qua loss of salary and Rs. 3000/- per month with regard to loss of management qua land measuring 1acre, 3 kanals and 3 marlas making total income to Rs. 1,56,000/- per annum. $1/4^{th}$ has been deducted for personal and living expenses of the deceased and multiplier of 15 has been applied to compute loss of dependency at Rs. 17,55,000/-. In addition, an amount of Rs. 1,00,000/- for loss of consortium, Rs. 25,000/- for funeral expenses and Rs. 20,000/- for loss of care and guidance to minor children has been awarded making total compensation to Rs. 19,00,000/-, payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The parties shall be referred to as the claimants and the insurance company, for facility of reference.

Counsel for the claimants would urge that the Tribunal has not allowed benefit of increase in income for future prospects to the extent of 50% as the deceased was 37 years old. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court ***Rajesh and others vs. Rajbir Singh and others 2013(3) RCR(Civil) 170***.

Another submission made by counsel is that compensation awarded under conventional heads needs enhancement.

Counsel representing the insurance company has controverted plea of the claimants for increase in income on the premise that matter with regard to future prospects is pending consideration before Hon'ble the Supreme Court in view of reference made in ***National Insurance Co. Limited vs. Pushpa***.

Another submission made by counsel is that the Tribunal has assessed income of the deceased at Rs. 3000/- per month as he was co-owner to the extent of 1 acre, 3 kanals and 3 marlas out of land measuring 15 kanals 18 marlas + 14 kanals 8 marlas recorded in jamabandi Ex. P-23. According to counsel, the mere fact that deceased was co-owner of above land is not sufficient to allow compensation when otherwise land is available to the claimants after death of Ram Kumar.

There is no dispute that the deceased was working as Re-winder in M/s Fila Packaging Private Limited, Kala Amb, District Sirmour (HP) at a salary of Rs. 10,000/- per month. Findings of the Tribunal assessing income of the deceased on the basis of his salary as Rs. 10,000/- per month cannot be faulted with.

The Tribunal has assessed income of the deceased at Rs. 36,000/- per annum by taking into consideration that he was co-owner of land to the extent of 1 acre, 3 kanals and 3 marlas. Indisputably, land owned by the deceased has been left with the claimants. There is no evidence adduced by the claimants that the deceased either had been cultivating the land or managing its affairs to uphold plea of the claimants that there is loss of his services qua management of the land owned by him. Under the circumstances, loss of income qua agricultural land and assessed by the Tribunal is set aside.

This brings the Court to the issue in regard to increase in income for future prospects. The deceased left behind a young widow, three minor children aged 6, 3 and 2 years respectively. It is difficult to accept that had the deceased remained alive, he would have stagnated at salary of Rs. 10,000/- per month. I find fortification to my observations from the fact of revision of minimum wages, at short intervals, by the State Governments. The mere fact that a reference is pending before a Larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of future prospects till the judgment in ***Rajesh and others' case (supra)*** is varied or set aside. As the deceased was less than 40 years of age, admissible increase would be 50% in the light of ***Rajesh and others' case (supra).*** In this manner, loss of dependency comes to Rs. 15000 x 12 x 15 = 27,00,000 – 6,75,000 (1/4th)= **Rs. 20,25,000/-.**

Under conventional heads, **Rs. 1,00,000/-** for loss of consortium to the widow and **Rs. 25,000/-** for funeral expenses awarded by the Tribunal is affirmed. In addition, claimants shall be entitled to an amount of Rs. **2.25 lakhs** for loss of love and affection, care and guidance for children of the deceased. Another amount of **Rs. 25,000/-** is payable for loss of estate. As such total compensation comes to **Rs.24,00,000/-** and the additional amount is **Rs. 5,00,000/-** The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization, to be shared by the claimants and released/invested in fixed deposits in the light of findings recorded in para 26 and 27 of the award.

As appeal preferred by the owner and driver of the offending vehicle has been accepted and findings recorded by the Tribunal on Issue No. 3 have been set aside, the driver, owner and insurance company of the offending vehicle are jointly and severally liable to pay compensation without any right of recovery with the insurance company.

For the foregoing reasons, the appeals stand disposed of.

(Rekha Mittal)
Judge

1.9.2017
paramjit

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