In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:16.11.2017

FAO No. 9686 of 2014

Mandeep Kaur and others

---Appellants

vs.

Bachittar Singh and others

---Respondents

FAO No. 678 of 2015(O&M)

New India Insurance Company Limited

---Appellant

vs.

Mandeep Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Rohit Goswami, Advocate
for Mr. Vinod Chaudhary, Advocate
for the appellant in FAO No. 678 of 2015
for respondent No. 3 in FAO-9686 of 2014

Mr. Ashwani Arora, Advocate
for the appellants in FAO-9686 of 2014
for respondent Nos. 1 to 5 in FAO-678 of 2015

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Rekha Mittal, J.

This order will dispose of FAO Nos. 9686 of 2014 and 678 of 2015 as these have emerged out of the same award dated 16.9.2014 passed by the Motor Accidents Claims Tribunal (FTC), Rupnagar (in short "the Tribunal") whereby compensation has been awarded in regard to death of

Jagtar Singh in a motor vehicular accident that took place on 15.10.2013 but Jagtar Singh succumbed to injuries on 3.11.2013.

The Tribunal has awarded compensation to the tune of Rs. 12,54,514/-. detailed hereunder:-

Monthly income of the deceased	Rs. 6000/-
Deduction for personal expenses	1/4th
Multiplier	17
Loss of dependency	Rs. 54000 x 17=9,18,000/-
Loss of love and affection	Rs. 20,000/-
Expenses on transportation and last rites	Rs. 20,000/-
Medical expenses	Rs. 2,96,514/-

FAO No. 9686 of 2014 has been filed by the claimants seeking enhancement of compensation whereas FAO No. 678 of 2015 has been filed by the New India Insurance Company (hereinafter to be referred to as "the insurance company").

FAO No. 678 of 2015

Counsel for the insurance company would argue that the claimants have failed to lead cogent and convincing evidence to establish their plea that accident was caused due to rash and negligent driving of the alleged offending vehicle. To bring home his contention, counsel has three fold submissions to make. The first submission made by counsel is that the occurrence in question took place on 15.10.2013 but the FIR was lodged after delay of three days on 18.10.2013. The story brought forth by Randhir Singh PW2 who is none else but brother-in-law (sala) of Jagtar Singh that Randhir Singh was following Jagtar Singh on separate motor cycle bearing No. PB-12P-8702 is highly unnatural and unbelievable. In addition, it is argued that as per averments raised in the application for compensation, driver of truck No. PB-23H-7499 (alleged offending vehicle) stopped at the place of accident and disclosed his name to Randhir Singh PW2 but Randhir Singh PW2 in his testimony before the Tribunal has stated that the truck driver alongwith vehicle fled away from the spot after causing the accident. No ruqa was sent by the doctor(s) in whose hospital Jagtar Singh was taken for treatment, sufficient to create a doubt in the story propounded by the claimants.,

Counsel for the insurance company has challenged its liability to pay compensation on the premise that driving licence purported to be possessed by Bachittar Singh, driver of the offending vehicle was issued by the licensing authority at Farukhabad but most of the records including the record pertaining to licence of Bachittar Singh was found missing from the office of said authority, therefore, an adverse inference is liable to be drawn that Bachittar Singh was not possessing a valid licence at the time of occurrence.

Counsel representing the claimants while refuting contentions of the insurance company has argued that findings recorded by the Tribunal on issue No. 1, taken up jointly with issue No. 2 are based upon detailed and correct appreciation of the materials on record and do not warrant intervention. Another submission made by counsel is that proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence or strict proof required to prove culpability of an accused. Further argued that driver of the offending vehicle did not appear in the witness box to controvert testimony of Randhir Singh PW2 nor there is any materials on record that Bachittar Singh ever raised an issue with regard to his false involvement in FIR registered at the behest of Randhir Singh PW2. There is no evidence on record that the claimants knew driver and owner of the offending vehicle prior to the occurrence to establish any collusion between the claimants and the private respondents.

With regard to plea of the insurance company that driver did not possess a valid driving licence, it is argued that the Tribunal framed issue No. 3 qua question of driving licence onus whereof was placed upon the insurance company. The insurance company failed to produce any positive evidence to establish its plea in this regard. Indisputably, records of the driving licence were required to be maintained by the concerned licensing authority and the fact that some records of the said licensing authority are missing, by no means, can be used to the advantage of insurance company to draw an adverse inference against the driver and owner of the offending vehicle.

I have heard counsel for the parties, perused the paper book and the records.

The arguments raised by counsel for the insurance company to assail findings of the Tribunal on Issue Nos. 1 and 2 are not meritorious and liable to be rejected. Jagtar Singh, husband of sister of Randhir Singh PW2 sustained serious injuries in the occurrence and was treated in three different hospitals and eventually succumbed to injuries on 3.11.2013. It is difficult to expect from Randhir Singh to approach the police for lodging first information report in place of bothering about treatment of injured-victim. It has been established on record that injured was initially taken to Kakkar Hospital, Morinda from where he was referred to Indus Hospital, Mohali and remained there upto 29.10.2013. He was admitted in Gian Sagar Hospital, Ram Nagar, Rajpura and passed away on 3.11.2013. Randhir Singh appeared in the witness box but counsel for the insurance company did not seek his explanation for his failure to lodge FIR till 18.10.2013. This apart, lodging of FIR is not a *sine qua non* for maintaining an application for compensation. The discrepancy in the plea of the claimants and testimony of Randhir Singh pointed out by counsel cannot be taken sufficient to discard or disbelieve case of the claimants and testimony of Randhir Singh PW2.

Counsel for the insurance company has made a vain attempt to raise the question of there being no ruqa sent by the hospital to the police. The insurance company neither examined any representative of the concerned hospital nor the police station concerned to lead any positive evidence with regard to ruqa being not sent to the police. In this view of the matter, I find myself unable to accept submissions of the insurance company that findings of the Tribunal on issue Nos. 1 and 2 are erroneous or liable to be set aside.

The plea of the insurance company to raise an adverse inference against the driver and owner of the offending vehicle because of certain records of licensing authority, Farukhabad being missing is misconceived and merits outright rejection. The insurance company miserably failed to discharge onus of issue No. 3, therefore, cannot escape its liability to pay compensation by way of indemnification of the insured/owner of the vehicle.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

FAO No.9686 of 2014

Counsel for the claimants has submitted that the claimants adduced voluminous evidence both oral and documentary to establish their plea that the deceased was an agriculturist and running business of sale of milk. For this purpose, counsel has invited attention of the Court to testimonies of Mandeep Kaur PW1, Baljit Singh PW3 and Kuldip Singh PW4 and the documents marked as exhibits. It is argued that the Tribunal has not extended benefit of increase in income for future prospects to the extent of 40% as the deceased was less than 40 years of age, in the light of latest judgment of Hon'ble the Supreme Court of India **Special Leave Petition (Civil) No. 25590 of 2014 (National Insurance Company Limited vs. Pranay Sethi and others** decided on 31.10.2017.

Counsel representing the insurance company, on the contrary, would state that adequate compensation has been assessed by the Tribunal both in regard to loss of dependency and under conventional heads. He has submitted that the Tribunal has wrongly allowed compensation of Rs. 2,96,514/- qua medical expenses as the claimants did not examine any witness to prove documents Exs PW1/A to PW1/H.

I have heard counsel for the parties and perused the paper book.

The plea of the claimants is that Jagtar Singh (since deceased) had been cultivating land and doing business of sale of milk generating income of Rs. 60,000/- per month. They examined Baljit Singh, Secretary Kotla Cooperative Milk Processing Society PW3 to prove that Jagtar Singh used to sell milk to the society. Baljit Singh has deposed that from 1.8.2011 to 31.7.2012, Jagtar Singh supplied milk to the society of Rs. 98,177.68/-. There is no clear evidence on record if Jagtar Singh had been maintaining cattle heads and running a dairy for sale of milk. There is no evidence as to from whom he had been purchasing milk for making supply to the aforesaid society. This apart, the document Ex. PW3/A is a computer generated document depicting supply of milk till 31.7.2012. Jagtar Singh sustained injuries in the occurrence in October 2013. There is no evidence if Jagtar Singh supplied any milk subsequent to 31.7.2012. Claimants have not produced any documents in respect of any accounts maintained by the deceased with regard to purchase/sale of milk. Even otherwise, Baljit Singh did not produce the register of membership maintained by the society. He has admitted his close relationship with the deceased and the claimants. In this view of the matter, claimants cannot derive much advantage from testimony of Baljit Singh to establish their plea that the deceased was doing business of sale of milk much less till his death.

The claimants have examined Kuldip Singh to prove that Jagtar Singh had taken land measuring 10 acres on “theka” from Kuldip Singh. The document produced by Kuldip Singh is not incorporated in records of any authority much less registered with the registering authority. Indisputably, there is no khasra girdawari in the name of Jagtar Singh. Nevertheless, the claimants have produced on record 'J' forms issued by M/s Chawla Traders, Morinda. Perusal of these 'J' forms with seal of Market Committee, Morinda would indicate that Jagtar Singh had been selling produce in the grain market, an evidence of his cultivating some land. The claimants have failed to adduce satisfactory much less cogent evidence to prove income of the deceased. However, taking a clue from the oral and documentary evidence on record, it can safely be concluded that the deceased was involved in agricultural activity. Taking into consideration minimum wage coupled with the materials on record, in the fitness of things, income of the deceased is assessed at Rs. 10,000/- per month. Indisputably, the deceased was less than 40 years of age. The claimants shall be entitled to increase in income for future prospects to the extent of 40%. The multiplier and deduction for personal expenses applied by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. 10000 x 12 x17 = 20,40,000 + 8,16,000(40%) = 28,56,000 – 7,14,000 ($1/4^{th}$) = Rs.21,42,000/-.

The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The Tribunal has awarded an amount of Rs. 2,96,514/- towards medical expenses on the basis of original bills and documents produced on record by relying upon judgment of this Court **Smt. Parsanni vs. Shri Sube Singh and another 2011(1) Law Herald 858.** I have gone through the documents produced by widow of the deceased and testimonies of Mandeep Kaur and Randhir Singh with regard to the deceased being treated in three different hospitals before his death on 3.11.2013 and find that the Tribunal has rightly relied upon the documents to accept claim qua medical expenses in regard to treatment of the deceased. Accordingly, findings of the Tribunal with regard to reimbursement of medical expenses to the tune of **Rs. 2,96, 514/-** are liable to be affirmed. In view of the above, total compensation comes to **Rs.25,08,514/-** and the additional amount is **Rs. 12,54,000/-(**25,08,514 – 12,54,514). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to widow and minor children of the deceased in the ratio 25:35:40. The amount falling to share of the minors shall be deposited in fixed deposit receipts payable to them on their attaining the age of majority or for a period of three years, whichever is later. The interest accruing on the FDRs shall be payable to mother for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

(**Rekha Mittal)**
Judge

16.11.2017
paramjit

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