IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 4.05.2017

1) FAO No.8700 of 2015

Smt. Sunita and others ...Appellants

Vs.

Vijender @ Gujan and others

...Respondents

2) FAO No.1805 of 2016

Shri Ram General Insurance Company Limited

...Appellant

Vs.

Sunita and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Munish Kumar Garg, Advocate, for the appellants.
Mr. Punit Jain, Advocate,
for the appellant (in FAO No.1805 of 2016) and
for respondent no. 3 (in FAO No. 8700 of 2015)
Mr. Kamal Singh, Advocate,
for respondent no. 1 (in FAO No. 8700 of 2015) and
for respondent No.7 (in FAO No. 1805-2016).
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Amol Rattan Singh, J.

These two appeals challenge the impugned Award of the learned Motor Accident Claims Tribunal, Jind, dated 18.09.2015, by which a compensation of Rs.9,30,000/- was awarded to the six claimants, on account of the death of Kulwant @ Kalwant Singh in a motor vehicle accident on 16.06.2013.

FAO No.8700 of 2015 has been filed by the claimants, i.e. the widow and five minor children of Kulwant @ Kalwant Singh, seeking enhancement of the compensation awarded, whereas FAO No.1805 of 2016 has been filed by the Shri Ram General Insurance Company Limited with which the vehicle involved was insured.

The insurance company has challenged the Award on the ground that, firstly, the deceased had boarded a commercial vehicle as a gratuitous passenger and therefore the company cannot be held liable to indemnify the insured and as such, even the liberty granted by the Tribunal from recovering compensation from the owner of the vehicle is inadequate, inasmuch as, the company should not have been held liable in the first place.

Other than that, it has been contended that a multiplier of 14 instead of 15 should have been applied by the Tribunal to arrive at the compensation payable and further, that no finding has been given by the Tribunal on the validity of the driving licence of the driver of the vehicle, i.e. respondent no.7 in the companys' appeal (respondent no.1 in the claimants' appeal).

The quantum of compensation has also been challenged, contending that it is too high.

2. The facts leading up to the filing of the petition, are that it was contended by the claimants that on 16.06.2013 Kulwant @ Kalwant Singh, was going from village Kelenga, District Bhiwani, to village Dhamtan Sahib, Tehsil Narwana, District Jind, and at about 4 a.m. he boarded a Tata-407 vehicle bearing registration no.HR-08-GA-0180, from the T-point, Rohtak.

The vehicle was allegedly being driven in a rash and negligent manner by respondent Vijender @ Gugan and when it reached near the Kelenga Fatak, Kulwant @ Kalwant Singh fell down, due to which he received multiple grievous injuries and died on the spot.

FIR No.422 dated 16.06.2013 was also registered against the driver, i.e. Vijender, for the alleged commission of offences punishable under Sections 279 and 304-A IPC, in Police Station Sadar Bhiwani, on the statement of one Hoshiar Singh.

As per the claimants, Kulwant @ Kalwant Singh was 40 years of age, doing labour work, besides selling milk and earning a total sum of Rs.18,000/- per month, on which the claimants were totally dependent.

Therefore, compensation to the tune of Rs.20,00,000/- was claimed.

3. Upon notice issued, respondents no.1 and 2 in the claim petition, i.e. the driver and owner aforesaid of the aforesaid vehicle, filed a joint written statement taking preliminary objections on maintainability and cause of action etc. and on merits stating that no accident with the said vehicle had ever taken place and that its driver had been falsely implicated in connivance with the police.

It was further contended that in any case, the said respondents were not liable to pay any compensation that may be awarded by the Tribunal, as the vehicle was insured with respondent no.3 before the Tribunal, i.e. with the Shri Ram General Insurance Company Limited.

4. The aforesaid company filed a separate written statement also taking similar preliminary objections and further again contending that no such accident had taken place.

Still further, it was contended that Vijender was not holding a valid driving licence at the time of the accident and the vehicle was also being driven in contravention of the insurance policy.

5. From the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

1. Whether the accident in question resulting in the death of Kulwant Singh took place on 16.06.2013 on account of rash and negligent driving of respondent no.1 Vijender @ Gugan while driving Tata-407 vehicle bearing No.HR-08-GA-0180? OPP
2. If issue no.1 is proved in the affirmative, what amount of compensation the petitioners are entitled and from whom? OPP
3. Whether the petition is not maintainable? OPP
4. Whether the respondents no.1 and 2 had violated terms and condition of the insurance policy, if so, to what effect? OPR-3
5. Relief."

6. The first claimant, i.e. Sunita, widow of Kulwant @ Kalwant Singh, testified as PW1, reiterating the contents of the petition. One Balinder Singh, Jaildar, appeared as PW2 and in his affidavit stated that Kulwant @ Kalwant Singh was working at his shop as Worker-cum-Assistant, drawing a salary of Rs.10,000/- per month.

Dr. Pardeep Kumar testified as PW3 to prove the most mortem report and one Dalbir was examined as PW4, who also supported the claim of the claimants.

7. The respondents examined the first respondent before the Tribunal, i.e. driver Vijender, who also testified in terms of his written

statement and further tendered documents which were taken on record by the Tribunal as Marks A to D, but were somehow not formally exhibited documents.

A copy of the insurance policy was tendered by the insurance company.

8. PW4 was found by the Tribunal to be an eye witness of the accident, who corroborated the version of the claimants, stating that on 16.06.2013 he was going towards Kelenga Fatak on his motorcycle bearing registration no.HR-12H-0487 and a Tata-407 vehicle, bearing the same registration number as given in the petition was going ahead of him, driven by its driver in a rash and negligent manner and that one person fell down from the vehicle and died near the Fatak.

In his cross-examination, he admitted knowing Kulwant @ Kalwant Singh personally and further stated that he had given the information to the police on the same day.

9. On the aforesaid evidence, read with the FIR registered, which the Tribunal stated was registered after collecting evidence against the driver, the issue of negligence was decided in favour of the claimants, further citing from a judgment of the Supreme Court in **Kusum Lata and others v. Satbir and others** 2011 (2) RCR (Civil) 379. In that judgment, their Lordships held that in a motor accident claim, the Court must keep in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible and if on the preponderance of probabilities, a case was established in their favour, that would be sufficient.

10. On the issue of compensation to be awarded, it was held that though PW2 had stated that Kulwant @ Kalwant Singh was working with

him at a salary of Rs.10,000/- per month, there was no firm evidence led showing such salary paid. However, since even an unskilled labourer would not have been earning less than Rs.6000/- per month in June 2013, that was taken to be the income of the deceased. Since he was married with five children, a 1/4th deduction was made from the aforesaid annual income of Rs.72,000/- towards the personal expenses of the deceased and the loss of dependent income to he claimants was worked out to Rs.54,000/- per annum.

Accepting the age of the deceased to be 40 years even as per the post mortem report, a multiplier of 15 was applied, thereby leading to a total loss of income of Rs.8,10,000/-.

The first claimant, widow of the deceased was held entitled to Rs.1,00,000/- as compensation towards loss of consortium and all the claimants were also held entitled to Rs.20,000/- towards performance of the last rites of the deceased. Consequently, a total sum of Rs.9,30,000/- was awarded.

11. On the issue that the deceased had taken a lift in a commercial vehicle, that contention of the insurance company was accepted, as the copy of the policy showed that other than the employees of the owner and driver of the vehicle, it could not be used for carrying passengers. However, it was held that the act being a piece of beneficial legislation, it should be interpreted in favour of the claimants and therefore, the insurance company was held liable to pay compensation at the outset, but with the right to recover it from the insured, in the proceedings before the executing Court itself.

12. Before this Court, Mr. Munish Kumar Garg, learned counsel for the appellants-claimants (in FAO No.8700 of 2015) submitted that firstly no amount has been awarded to the children of the deceased for the loss of love

and affection, care and guidance of their father, even though all were minors and further, no amount has been granted for transportation of the dead body and yet further, nothing has been awarded by way of loss of prospects of an increased income and litigation expenses.

13. Mr. Punit Jain, learned counsel for the appellant-insurance company, submitted that, firstly, the deceased having been accepted to be a gratuitous passenger on the vehicle, the company cannot be foisted with any liability whatsoever to pay the compensation and further, no enhancement of any compensation is due, because the Rs.9,30,000/- awarded is wholly sufficient.

In support of his arguments, learned counsel relied upon the following two judgments of the Supreme Court:-

(i) **M.V. Jayadevappa & Anr. v. Oriental Fire & General Insurance Co. Ltd. & Ors.** (2004) 12 Supreme Court Cases 43,

(ii) **New India Insurance Company Ltd. v. Ahsa Rani and others** (2003) 2 SCC 223.

14. In rebuttal, learned counsel for the claimants also relied upon two judgments of Supreme Court in **Oriental Insurance Co. Ltd. v. Nanjappan and others** 2004(13) SCC 224 and **United Insurance Co. Ltd. v. K. N. Poonam & Ors.** 2011(2) ACJ 917.

15. Having considered the aforesaid arguments, it is first to be seen that the issue on negligence in causing the accident has not been contested by the insurance company, because even in its grounds of appeal, the entire stress is on the fact that the deceased was a gratuitous passenger and that the compensation awarded is in excess.

Hence, this Court is not required to look at that issue at all.

16. Coming then to the issue of adequacy of the compensation awarded, as already noticed, the Tribunal took the monthly income of the deceased to be Rs.6000/- and as per the notification of the Haryana Government dated 01.03.2015, an unskilled labourer was entitled to minimum wages of Rs.6847.75, and as on 01.03.2013, the minium wage was Rs. 5,695/-.

The accident having taken place about three and half months after 01.03.2013, I do not consider it appropriate to reduce the income of the deceased, in view of the fact that with six dependents upon him, Rs.6000/- can be expected to have been earned by the deceased, per month.

17. Coming to the issue of the deduction to be applied to the personal expenses of the deceased, in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** (2009) 6 SCC 121, it has been held that where the number of dependents between 4 to 6, a 1/4th deduction should be made, which was done by the Tribunal also. Yet, it needs mention that in **New India Assurance Co. Ltd. v. Gopali and ors.** 2012 (3) RCR (Civil) 818, it was held as follows, after discussing previous judgments on the issue:-

> *"In any case, where the family of the deceased comprised of 5 persons or more having an income of Rs.3,000/- to Rs.5,000/-, it is virtually impossible for him to spend more than 1/10th of the total income upon himself".*

Thus, in the present case, where the deceased had five minor children to look after, with an income of Rs.6000/-, it cannot be accepted that he was spending 1/4th of his income on himself and in the opinion of this Court, the appropriate deduction to be applied would be 1/6th and not 1/4th and as such, the loss of monthly dependent income to the claimants would be

Rs.5000/- per month or Rs.60,000/- per annum.

18. As regards the multiplier, in *Sarla Vermas'* case (supra), it has been held that where the deceased was in the age group of 36 to 40 years, a multiplier of 15 should be applied which has been done by the Tribunal and requires no interference with, with the age of the deceased shown to be 40 years in the post mortem report. Applying that multiplier to the loss of annual income of Rs.60,000/-, the total loss of income to the appellants would be Rs.9,00,000/-.

19. I also agree with learned counsel for the appellants-claimants that the children of the deceased are also entitled to compensation for loss of love and affection, care and guidance of their father and though otherwise this Court has normally been awarding Rs.1,00,000/- to Rs.2,00,000/- to all very minor children, however, the number of children in this case being five, it is considered appropriate to award a sum of Rs.50,000/- to each of the children, towards the loss of love and affection, care and guidance of their father. Thus, a total amount of Rs.2,50,000/- is awarded under that head.

20. Towards funeral expenses and last rites, the Tribunal having awarded Rs.20,000/-, that is Rs.5000/- less than what is now conventionally awarded in terms of the judgment of the Supreme Court in **Rajesh and others vs. Rajbir Singh and others** (2013) 9 SCC 54, consistently followed thereafter. Therefore, the said amount is also awarded, which is Rs.5000/- more than and what was awarded by the Tribunal and would also cover the expenses for transportation of the body of the deceased to his village, which is shown to be in a different district.

21. Coming to the last contention of learned counsel for the appellants, that no amount has been awarded towards the loss of future

prospects of an increased income. In view of the fact that that issue has been referred to a larger Bench of the Supreme Court in **National Insurance Company v. Pushpa and others** (2015) 9 SCC 166, this Court has been calculating the loss of such prospects of an increased income and directing that the compensation awardable under that head, be deposited with the Tribunal by the insurance company, with the Tribunal thereafter having it deposited in a nationalized bank, so as to carry maximum interest on the amount. Thereafter, if the ratio of the judgment in *Pushpas'* case (supra), comes to the effect that such loss of income is not awardable to the heirs of victims who were not in a permanent salaried employment, the amount deposited alongwith interest gathered thereupon would be refunded to the insurance company, whereas if the ratio of that judgment comes to the effect that the amount is payable to the claimants, then it would be disbursed to them without further reference to this Court, alongwith the interest that has gathered thereupon in the fixed deposit.

However, in the present case, the deceased having been found to be a gratuitous passenger with no argument raised to the contrary before this Court. Therefore, in my opinion, it would be unfair to direct the insurance company to deposit any amount under that head with the Tribunal and as such, that issue is left open.

If the ratio of the judgment in *Pushpas'* case comes to the effect that such compensation for loss of future prospects of an increased income is not payable to the heirs of a motor vehicle accident victim (if the victim was not in a permanent salaried employment), then nothing further would remain to be be done in the present appeal. However, if the ratio of the judgment in *Pushpas'* case comes in favour of the claimants in FAO No.8700 of 2015, they would be at liberty to get this appeal reviewed for that limited purpose by moving an appropriate application in that regard.

22. Thus, what is awarded to the appellant in FAO No.8700 of 2015 presently, is as follows:-

i)	Towards loss of income	Rs.9,00,000/-
ii)	Towards loss of consortium (to appellant no.1)	Rs.1,00,000/- (as awarded by the Tribunal)
iii)	Towards loss of love and affection to appellants no.2 to 6	Rs.2,50,000/-
iv)	Towards funeral expenses and last rites	Rs.25,000/-
	Total	**Rs.12,75,000/-**

Thus, this Court has now awarded a sum of Rs.3,45,000/- more than what was awarded by the Tribunal. The enhanced amount would carry an interest @ 6% per annum, running from the date of the filing of the claim petition till the date of payment thereof.

23. Now coming to the issue of whether the insurance company should have been wholly absolved of its liability to pay compensation or instead it should have been the driver and owner, i.e. respondents no.7 and 8 in FAO no.1805 of 2016, who should have been directed to pay the compensation.

24. In *M.V. Jayadevappas'* case (supra) cited by learned counsel for the insurance company, the order of the Supreme Court to the effect that no liability should have been fastened on the insurance company was a short order passed in a case wherein the Tribunal exonerated the insurance company completely and that order was upheld.

In *Asha Ranis'* case (supra), the issue essentially was whether after the amendment made in Section 147 of the Motor Vehicles Act, 1988, it was compulsory for the insurer to insure even in the case of a goods vehicle, the owner of the goods or his authorised representative who was travelling in the goods vehicle, when the vehicle met with an accident.

Undoubtedly, one of the hon'ble Judges held that the insurers' liability would be limited to the liability under the Workmens' Compensation Act and that does not speak of any passenger in a goods carriage (reference para 25 of that judgment, SCC citation).

Otherwise also, it is well settled now that unless extra premium has been paid by the owner of the vehicle, to cover even those persons who were travelling as gratuitous passengers in a goods vehicle, the insurance policy would not cover such passengers and therefore, the company would not be liable to pay the compensation. In the present case, a perusal of the insurance policy, a copy of which has been produced in Court, it having been duly exhibited before the Tribunal, makes it very clear that the policy did not cover passengers other than the driver and owner of the vehicle.

Hence, the deceased definitely not being an employee in the vehicle in question, the insurance company is not liable to pay compensation.

25. However, learned counsel for the appellants-claimants has cited *Nanjappans* case (supra), wherein also, their Lordships of the Supreme Court held that the insurer would pay the quantum of compensation but would be entitled to recover the same from the insurer, in proceedings before the executing Court itself, thereby obviating the need for a separate suit to be filed by the insurance company.

In *Poonams'* case (supra) also the insurance company was directed to pay the compensation and thereafter recover it from the owner of the vehicle.

In the present case, the insurance company already having been granted liberty by the Tribunal to recover it from the owner of the vehicle, i.e. respondent no.8 in FAO No.1805 of 2016, in proceedings before the executing Court itself, I see no reason to reverse that direction given by the Tribunal.

In the opinion of this Court, in fact, where a driver of a goods vehicle gives a lift to a passenger, i.e. the owner of the vehicle, it would not be an act by the driver in the discharge of his duties, which duties are only to drive the vehicle carrying goods in it, or to carry other employees of the owner of the vehicle or those incharge of such goods. Thus, the driver would actually be acting contrary to the directions of his employer and not in pursuance of his duties by giving a lift to a passenger, whether by taking illegal payment from him or otherwise.

Hence, it is considered appropriate that respondent no.7 would be jointly liable with respondent no.8 to discharge the liability of the insurance company in proceedings before the executing court and further, the owner of the vehicle, i.e. respondent no.8, would also be at liberty to recover the compensation from the driver, i.e. respondent no.7, who actually gave a lift to the deceased, in the absence of the owner, i.e. respondent no.8.

26. Consequently, in terms of what has been held in this judgment, in view of the enhancement of the compensation granted to the appellants in FAO No.8700 of 2015, that appeal is partly allowed.

FAO No.1805 of 2016, filed by the insurance company, is dismissed, but with a modification in the Award as regards the recoverability of the compensation by the insurance company from respondents no.7 and 8 in the present case, in terms of what has been held immediately hereinabove.

There shall be no order as to costs in either appeal.

May 4, 2017 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**

1.Whether speaking/reasoned? Yes/No

2. Whether reportable? Yes/No