IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 01.05.2018

1. FAO No.2237 of 2000(O&M)

Manmohan Khera & ors. ... Appellants

Versus

Archana Sharma & ors. ... Respondents

2. FAO No.2238 of 2000(O&M)

Manmohan Khera & ors. ... Appellants

Versus

Sharda Devi & ors. ... Respondents

3. FAO No.463 of 2001(O&M)

Sharda Devi & anr. ... Appellants

Versus

Oriental Insurance Co. Ltd. & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Deepak Suri, Advocate,
for the appellants in FAOs No.2237 and 2238 of 2000.

Mr. Arun Bansal, Advocate,
for the appellant in FAO No.463 of 2001 .

Mr. Suvir Dewan, Advocate,
for respondent No.4 in FAOs No.2237 and 2238 of 2000 and
for respondent No.1 in FAO No. 463 of 2001.

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RAMENDRA JAIN, J.(Oral)

Through this common judgment, three appeals are being disposed of i.e. two appeals bearing FAOs No.2237 and 2238 of 2000 filed by the legal heirs of owner of the offending truck for shifting the liability from owner to the Insurance Company with whom their truck was insured and third appeal bearing FAO No.463 of 2001 by the claimants for enhancement of compensation. For brevity facts are taken from FAO No.2237 of 2000.

Both the parties are *ad idem* that these appeals have to be decided in accordance with latest judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi & ors., 2017(4) RCR (Civil) 1009.

Briefly stated, on 03.05.1996, an engineer of National Fertilizers Limited namely Rishi Kant was driving scooter in the factory premises. Offending truck bearing Regd. No.PNS-4503 driven by respondent No.3 namely Mohinder Singh struck his scooter from behind while coming in a rash and negligent manner. As a result thereof, Engineer Rishi Kant fell down on the road and was run over by the truck. Rishi Kant was referred to PGI, Chandigarh, where after his admission for around 13 days, he expired on 16.05.1996. His parents, widow and minor son impleading owner and driver of the offending truck and Insurance Company claiming themselves depending upon Rishi Kant filed their respective claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for grant of compensation on account of his death.

Their claim petition was contested. Learned Tribunal vide impugned award dated 02.06.2000 exonerating the Insurance company from its liability awarded a compensation of ₹8,15,000/- to the claimants, directing the driver and owner of the offending truck holding their liability jointly and severally to pay the aforesaid amount of compensation along with interest @ 12% per annum from the date of filing of claim petition till realization.

Being aggrieved, the legal heirs of the owner Krishan Lal Khanna as he expired after passing of the impugned award but before filing appeal before this Court vide two separate appeals bearing FAOs No.2237 and 2238 of 2000 have laid challenge to the impugned consolidated award of the learned Tribunal accepting both the claim petitions filed; one by widow and son and other by parents of the deceased and holding the liability of their father. Simultaneously, the claimants have also filed FAO No.463 of 2001 for enhancement of compensation.

Learned counsel for the legal heirs of the deceased owner of the offending truck relying upon <u>United India Insurance Co. Ltd. Vs. Asha Rani & ors.</u>, 2002 ACJ 134, *inter alia* contends that the learned Tribunal has failed to appreciate that "public place" also covers the roads in a factory premises, because even, where general public enters with permission, the same becomes a "public place" in view of the provisions of the Motor Vehicles Act. Since deceased had died on a road in factory premises, the same ought to have treated as a public place by the learned Tribunal. The offending truck was insured with respondent No.4, therefore, the liability to make payment of compensation had to be fastened upon it exonerating owner and driver from their liability.

Learned counsel for the claimants *inter alia* contends that deceased Rishi Kant was a qualified engineer and drawing a salary of ₹7986/- duly proved by PW-1 Dharampal coupled with salary slip (Ex.P-1) of the deceased . Learned Tribunal has wrongly considered monthly income of the deceased at ₹5725/- instead of ₹7986/-, which was proved by salary slip (Ex.P-1). That apart, according to *Pranay Sethi's case (supra),* claimants were also entitled to addition of 50% to the said monthly income of the deceased towards his future prospects for grant of compensation to them. Nothing has been granted by learned Tribunal towards attendant and transportation charges for shifting of the decreased from Nangal to Chandigarh and during his hospitalization for 13 days. Learned Tribunal has also erred in not granting ₹70,000/- towards consortium, loss of estate and funeral expenses.

On the other hand, learned counsel for the Insurance Company has not been able to refute or cite any contrary law to the submissions made by learned counsel for the owner of the offending truck as well as the claimants and to the law cited by learned counsel for the legal heirs of owner. It is simply contended that the learned Tribunal has wrongly applied the multiplier of 18 for calculating compensation so to be awarded to the claimants. The same ought to have been 17. He has not opposed the submission of learned counsel for the appellants-claimant (parents).

I have given anxious consideration to the arguments raised by both the sides.

Leaned counsel for the respondent-Insurance Company since has not able to refute the submissions of learned counsel for the legal heirs of the owner of the offending vehicle that the accident took place in public place, it is concluded that the Insurance Company is liable to make payment of compensation. Accordingly, the legal heirs of the owner of the offending vehicle in FAOs No.2237 and 2238 of 2000 are exonerated of their liability being indemnified by respondent No.4-Insurance Company.

In the salary slip Ex.P-1 of the deceased Rishi Kant, his gross monthly salary was shown at ₹7,986/- . He was carrying home ₹5,795/-. No deductions from the gross salary of the deceased was shown towards payment of income tax. The deductions, if any, were either for savings of the deceased towards GPF or for his personal expenses etc.

According to *Pranay Sethi's case (supra),* the compensation for which the appellants-claimant are entitled is reassessed as under:-

Gross salary of the deceased on the basis the salary slip Ex.P-1 is taken at ₹7986/- per month. Adding 50% to the same towards future prospects of the deceased, the amount comes to ₹11,979/- . After deducting 1/3rd, out of the same towards personal expenses of the deceased, the remaining comes to ₹7,986/- It is not disputed that at the time of his death, the deceased was 28 years old. Therefore, in view of *Pranay Sethi's case (supra)*, multiplier of 17 has to be applied and not 18. Applying the same, the total amount comes to ₹16,29,144/-. Further ₹30,000/- has to be added under conventional heads of funeral expenses, loss of estate. Adding the same, total compensation payable comes to ₹16,59,144/-.

In view of the above, the impugned award is modified. The compensation of ₹8,15,000/- is enhanced to ₹16,59,144/- . The learned Tribunal has granted 50% of the compensation to the parents and remaining to the widow and minor of the deceased. The said proportion is not disputed by any of the parties. Therefore, the parents of the deceased in FAO No.463 of 2001 are held entitled only to 50% of the aforesaid enhanced compensation along with interest @ 7.5% from the date of filing of claim petition till realization.

The Insurance Company is directed to deposit the amount of ₹16,59,144/- before the learned Tribunal within two months from today along with interest aforesaid from the date of institution of the claim petition till its realization for onward disbursement to the claimants in proportion so arrived at by it, in accordance with law against proper receipt and identification, failing which the aforesaid compensation would entail interest @ 12% per annum.

In view of discussion made above, both the appeals bearing FAOs No.2237 and 2238 of 2000 filed by legal heirs of owner of the offending truck are accepted in toto. FAO No.463 of 2001 filed by the parents is partly allowed.

01.05.2018 **(RAMENDRA JAIN)**
monika **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*