208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 02.04.2018

1. FAO No.12 of 2010(O&M)

United India Insurance Company Limited .... Appellant

versus

Prem Singh and others .... Respondents

2. FAO No.16 of 2010(O&M)

United India Insurance Company Limited .... Appellant

versus

Sita Devi and others .... Respondents

3. FAO No.17 of 2010(O&M)

United India Insurance Company Limited .... Appellant

versus

Narsi Ram and others .... Respondents

4. FAO No. 5891 of 2010(O&M)

Sita Devi .... Appellant

versus

Vijay and others .... Respondents

5. FAO No. 3553 of 2010(O&M)

Narsi Ram and others .... Appellants

versus

Vijay and others .... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

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Present: Mr.Vikas Mohan Gupta, Advocate for the appellant-insurance company (in FAO Nos. 12, 16 and 17 of 2010) and for respondent No.3 (in FAO Nos. 5891 and 3553 of 2010).

Mr.Sushil Sheoran, Advocate for respondent No.1 (in FAO No. 16 of 2010), for respondents No. 1 to 4(in FAO No. 17 of 2010) and for the appellants (in FAO Nos. 3553 and 5891 of 2010).

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<u>REKHA MITTAL J. (Oral)</u>

This order will dispose of FAO Nos. 12, 16, 17, 5891 and 3553 of 2010, as these have emerged out of the same award dated 16.10. 2009 passed by the Motor Accidents Claims Tribunal, Hisar (in short 'the Tribunal') whereby compensation has been awarded on account of injuries sustained by Sita Devi, Phool Pati, Prem Singh and qua death of Meera.

FAO Nos. 12, 16 and 17 of 2010 have been filed by the United India Insurance Company Limited (in short 'the insurance company') whereas FAO No. 3553 of 2010 has been filed by Narsi Ram and others for enhancement of compensation in regard to death of Meera and FAO No. 5891 of 2010 has been filed by Sita Devi, injured for enhancement of compensation.

FAO Nos. 12, 16 and 17 of 2010

The sole submission made by counsel for the insurance company is that on 24.04.2006, Sita Devi, Prem Singh, Phool Pati and Meera were travelling in Jeep bearing No. HR-17-1077 driven by Vijay and owned by Mahi Pal son of Sube Singh as gratuitous passengers, therefore, insurance company cannot be fastened with liability to pay compensation. It is further argued that the policy issued in favour of the insured is a liability policy and there was no special premium paid to cover the risk of injury or death to passengers travelling in the vehicle in question.

Counsel representing the claimants has supported the award holding the insurance company jointly and severally liable to pay compensation. It has further been argued that in regard to injuries sustained by Phool Paati, Tribunal has awarded compensation of ₹ 4660/- vide the same award. The insurance company filed Civil Revision No. 173 of 2010 to challenge the award passed in favour of Phool Pati but the said petition was dismissed by this Court on 13.01.2010, therefore, findings of the Tribunal holding the insurance company liable to pay compensation to the claimant in the case of Phool Pati have attained finality, therefore, would constitute *res judicata* in the present appeals.

In reply, counsel for the insurance company would argue that as in the case of Phool Pati, Tribunal has awarded a paltry sum of ₹ 4660/-, petition filed by the insurance company was dismissed in limine by holding that revision would also not lie to challenge such an award. In addition, it is argued that as the amount awarded in the case of Phool Pati was less than ₹ 10,000/-, the insurance company could not file an appeal and was constrained to file a revision petition by invoking the provisions of

Article 227 of the Constitution of India. It is further argued that this Court dismissed the revision petition as the amount involved was meagre.

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

It is undisputed position of the case that four claim applications were filed in regard to injuries sustained by persons travelling in Jeep No. HR-17-1077 driven by Vijay on the ill fated day of 24.04.2006. The claim applications filed by Sita Devi, Prem Singh, Phool Pati and Narsi Ram and others were decided by a common award dated 16.10.2009 whereby compensation was awarded with regard to injuries sustained by Sita Devi, Prem Singh, Phool Pati as well as qua death of Meera in regard whereof Narsi Ram and others claimed compensation. The insurance company was held liable to pay compensation to indemnify the insured namely Mahi Pal.

Undisputedly, the insurance company filed Civil Revision No. 173 of 2010 to challenge the award granted in favour of Phool Pati. The said revision came to be dismissed by this Court on 13.01.2010 meaning thereby that findings recorded by the Tribunal to pay compensation to Phool Pati by the insurance company have attained finality. As soon as liability of the insurance company to pay compensation to Phool Pati on the basis of same very policy has been upheld by this Court, it is not open for the insurance company to raise the plea that the insurance company is not liable to pay compensation in respect of injuries sustained by Sita Devi, Prem Singh and qua death of Meera.

In view of the above, contention raised by counsel for the insurance company is not tenable and liable to be rejected.

For the foregoing reasons, appeals filed by the insurance company fail and are accordingly dismissed.

FAO-3553-2010

The Tribunal has awarded compensation of ₹ 5,50,000/- in regard to death of Smt.Meera detailed hereunder:-

Monthly income of the deceased	₹ 4000/-
Deduction for personal expenses	1/4th
Multiplier applied	15
Loss of dependency	₹ 5, 40,000/-
Expenses on last rites etc, loss of love and affection etc.	₹ 10,000/-

Counsel for the claimants would argue that value of the services of the deceased assessed by the Tribunal is on lower side and needs enhancement. As the deceased was 35 years old, appropriate multiplier in the light of the judgment **Sarla Verma and others v. Delhi** Transport **Corporation and another, 2009(6) SCC 121, w**ould be 16 and adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported the assessment made by the Tribunal.

The occurrence in question took place in April, 2006. The deceased was 35 years old. Taking a clue from the minimum wage fixed by the State of Haryana at the relevant time coupled with the fact that a house-maker has multifarious duties to perform, income of the deceased assessed by the Tribunal is affirmed. However, there would not be any deduction for personal expenses in the light of Division Bench judgment of this Court

Paramjit Singh and another v. Dilbagh Singh alias Bagga and others, 2014(4) RCR(Civil) 895. As the deceased was 35 years old, admissible multiplier would be 16. In this manner, loss of dependency comes to ₹ 4000 x 12 x 16 = ₹ 7,68,000/-.

Under conventional heads claimants would be entitled to ₹ 55,000/- detailed hereunder:-

Loss of consortium to the spouse	₹ 40,000/-
Funeral/last rites expenses	₹ 15,000/-

Total compensation is (₹ 7,68,000/- + ₹ 55,000/-)₹ 8,23,000/-and the additional amount is ₹ 2,73,000/-(₹ 8,23,000/- - ₹ 5,50,000/-) payable with interest at the rate of 7.5% p.a. from the date of the petition till realisation to children of the deceased in equal proportion, to be invested in fixed deposits payable on their attaining age of majority or for a period of three years,whichever is later.

The appeal is partly allowed in the aforesaid terms.

<u>FAO No. 5891 of 2010</u>

Sita Devi, injured has been awarded compensation of Rs. 27, 851/- detailed hereunder:-

Loss of income	₹ 1300/-
On account of hospitalisation, special diet, transportation etc.	₹ 3000/-
Expenses on medical treatment	₹ 23, 551/-

Counsel for the appellant would argue that compensation awarded by the Tribunal is grossly inadequate and is not based upon materials on record. To bring home his contention, he has pointed out towards testimony of Dr. N.C.Verma, Medical Officer, CMC Hospital, Hisar-PW1 and documents Ex.P2 to Ex.P4. It is argued that in Ex.P4-discharge slip, it has been clearly recorded that the injured suffered fracture pelvis with deep lacerated wound left iliac region. She remained hospitalised for a period of 10 days.

Counsel representing the insurance company has supported the assessment.

Dr.N.C.Verma has deposed that the main injury was on lower abdomen pelvis left trunk and back lower chest. Necessary surgery was carried out and patient was discharged on 04.05.2006. Patient had improved at the time of discharge and required follow-up. He proved the documents ruqa-Ex.P1, MLR-Ex.P2, bed head ticket-Ex.P3(containing 12 pages) and discharge slip-Ex.P4.

The Tribunal had assessed value of services of the claimant at ₹ 4000/- per month. Taking into consideration the nature of injuries sustained by the victim, she is allowed loss of income for a period of three months and the same comes to ₹ 12,000/-.

The injured remained hospitallised from 24.04.2006 to

04.05.2006. She had undergone surgery when she was under treatment as an indoor patient in CMC Hospital, Hisar. She is awarded an amount of ₹ 10,000/- for pain and sufferings. The claimant is awarded an amount of ₹ 10,000/- for services of an attendant, transportation and special diet etc. Reimbursement of medical expenses allowed by the Tribunal is affirmed. In this manner, compensation payable to the claimant comes to (₹ 12000 + ₹ 10000 + ₹ 10000 + ₹ 23551) ₹ 55,551/-and the additional amount is (₹ 55,551 - ₹ 27, 851-) ₹ 27,700/- which shall carry interest at the rate of 7.5% p.a. from the date of petition till realisation.

The appeal is partly allowed in the above said terms.

(REKHA MITTAL)
JUDGE

April 02, 2018
sunita

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No