In the High Court of Punjab and Haryana at Chandigarh

FAO No. 115 of 2013 and
Cross Objections No. 186-CII of 2014(O&M)
Date of Decision: 6.12.2018

Bajaj Allianz General Insurance Company Limited

---Appellant

versus

Joginder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Subhash Goyal, Advocate
for the appellant

Mr. Vinod Kumar, Advocate
for respondents No. 1 to 4-cross objectors

Mr. Nonish Kumar, Advocate,
for respondents No. 5 and 6

***

Rekha Mittal, J.

This order will dispose of FAO No. 115 of 2013 and Cross Objections No. 186-CII of 2014 as these have emerged out of the same award dated 9.10.2012 passed by the Motor Accidents Claims Tribunal, Hoshiarpur (in short "the Tribunal") whereby compensation has been assessed on account of death of Satnam Singh in a motor vehicular accident that took place on 15.6.2010 and the insurance company has been given right of recovery against the driver and insured of offending trolla bearing No. PB-08-BE-6315.

FAO No. 115 of 2013 has been filed by the Bajaj Allianz

General Insurance Company Limited (hereinafter to be referred as "the insurance company") whereas Cross Objections have been filed by claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been preferred primarily on the ground that as the deceased was a gratuitous passenger in a goods carrying vehicle, insurance company cannot be fastened with liability to pay compensation.

<u>FAO No. 113 of 2013 and Cross Objections No.186-CII of 2014</u>

The sole submission made by counsel for the insurance company is that as there was no contract between the insured and insurance company covering risk of injury or death of a gratuitous passenger carried in a goods vehicle, the insurance company has wrongly been fastened with liability to pay compensation even though it has been allowed to recover the amount from the driver and insured, after payment thereof to the claimants. In support of his contention, he has relied upon judgments of this court **Data Ram and another vs. TATA AIG General Insurance Co. Ltd. and others FAO No. 4290 of 2014 decided on 24.8.2017** alongwith connected case and **Ranbir Chand vs.Tarsem Lal and others FAO No. 3242 of 2004 decided on 20.9.2018** alongwith connected cases**.**

Counsel representing respondents No. 5 and 6, driver and owner of the offending vehicle has supported findings of the Tribunal whereby the insurance company has been held liable to pay compensation to the claimants.

Counsel for the claimants has echoed arguments of counsel for respondents No. 5 and 6 for fastening liability against the insurance company as a measure of indemnification of the insured even though the insurance company may be entitle to recover the amount from insured after payment of compensation to the claimants.

With regard to Cross Objections preferred by the claimants, it is pertinent to note that the Tribunal has awarded compensation of Rs. 1,00,000/- to be shared by the claimants equally, detailed hereunder:-

Monthly income of the deceased	Rs. 3000/-
Deduction for personal expenses	50%
Multiplier	5
Loss of dependency	Rs. 90,000/-
Funeral Expenses	RS, 10,000/-

Counsel for the claimants would urge that as the deceased was 27 years old unmarried son of Joginder Singh and Manjit Kaur, claimants No. 1 and 2, they are entitle to just and reasonable compensation by re-assessing income of the deceased, addition in income for future prospects and appropriate multiplier on the basis of age of the deceased himself. He has prayed that adequate compensation may be allowed under conventional heads.

Counsel representing the respondents before the Tribunal have supported assessment made by the Tribunal.

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

Be that as it may, it is undisputed position of the case that deceased was travelling in a goods vehicle as a gratuitous passenger. When the case is examined in the light of judgments of this court in **Data Ram and another's case (supra)** and **Ranbir Singh's case (supra)**, I find merit in contention of the insurance company that the insurer is not liable to pay compensation to the claimants in execution of contract of insurance entered into between the insured and insurer. However, as the insurance company has already paid compensation to the claimants in terms of the award passed by the Tribunal, insurance company shall be entitle to recover that amount from the insured in place of the claimants.

The plea of the claimants is that the deceased was a skilled crane operator and hired by respondent No. 3 before the Tribunal for loading and unloading girders with the help of crane. They have stated that income of the deceased was Rs. 15000/- per month and he was earning Rs. 25000/- per month when he was working abroad. The claimants have failed to adduce satisfactory much less cogent and convincing evidence with regard to avocation and income of the deceased. Taking a clue from minimum wage available at the relevant time, income of the deceased is assessed at Rs. 3600/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses allowed by the Tribunal is affirmed. However, in view of age of deceased, appropriate multiplier is 17. In this manner, loss of dependency is calculated at Rs. 5,14,080/- [3600 x12x 17=7,34,400+2,93,760=10,28,160-5,14,080(50%)].

Under conventional heads, claimants No. 1 and 2 shall be entitle to Rs. 80,000/- (Rs. 40,000/- each) for loss of consortium. They are further entitle to Rs. 30,000/- i.e. Rs. 15,000/- for loss of estate and Rs. Rs. 15,000/- for funeral expenses.

Total compensation is Rs. 6,24,080/- and the additional amount is Rs. -5,24,080/- (6,24,080-1,00,000), payable with interest @ 7.5% per annum from the date of petition till realization to mother of the deceased.

The additional amount shall be payable only by the driver and owner of the offending vehicle as the insurance company is not liable to pay compensation, in view of discussion made hereinbefore.

For the foregoing reasons, the appeal and cross objections stand partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

6.12.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No