**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**FAO No.2884 of 2013 (O&M) and
XOBJC-68-CII-2014
Date of decision:09.01.2018**

Reliance General Insurance Company Limited ... Appellant

Vs.

Sunita and others ... Respondents

FAO No.3531 of 2013 (O&M)

Ram Mehar and another ... Appellants

Vs.

IFFCO Tokio General Insurance Company Ltd. & others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Suman Jain, Advocate
for the appellant (in FAO No.2884 of 2013).

Mr. Vikas Chaudhary, Advocate
for the appellant (in FAO No.3531 of 2013) and
for respondent Nos.6 and 7 (in FAO No.2884 of 2013).

Ms. Priya Deep, Advocate, for
Mr. Aftab Singh Khaira, Advocate
for respondents No.1 to 5/claimants.

Mr. Rajesh Bansal, Advocate
for respondent No.1/Insurance Company (in FAO No.3531/13).

Mr. S.S.Kharb, Advocate
for respondents No.9 and 10.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two appeals, bearing Nos.2884 of 2013 and 3531 of 2013 filed on behalf of the Reliance General

Insurance Company Limited and Ram Mehar, respectively and the cross objections preferred by the claimants. The facts are being taken from FAO No.2884 of 2013.

Mr. Suman Jain, learned counsel for the appellant (in FAO No.2884 of 2013) submits that deceased Ram Gopal unfortunately while driving more cycle bearing registration No.HR-20S-9833 after purchasing goods from the market, as per the averments made in the claim petition and findings given by the Tribunal, had died in an accident involving the rash and negligent driving of Jeep bearing No.HR-08C-0975 (for short 'Jeep') only and not of TATA 407 No.HR39-6746 (for short 'Tata 407'). The aforementioned fact has also been noticed by the Tribunal but yet fastened the liability to the extent of 50:50 i.e. 50% on the Insurance Company of the Tata 407 and 50% on the insurer of the Jeep, i.e., Iffco Tokio General Insurance, whereas, statements of the claimants and the contents of the FIR revealed that it was the Jeep which had hit the motor cyclist from the back side and therefore, no rash and negligent driving had been attributed to Tata 407, therefore, fastening of liability to the extent of 50% towards insurer of Tata 407 is liable to be set aside and the entire compensation is required to be fastened upon the insurer of Jeep.

He has drawn the attention of this Court to the statement of PW2-Dharam Pal as well as the contents of the FIR to establish that there are very vague allegations involving the TATA 407, whereas, the entire negligence has been attributed to the Jeep, therefore, it was incumbent upon the Tribunal to fasten the liability upon the Insurance Company of Jeep, thus, award of the Tribunal to the aforementioned extent is liable to be set aside.

Mr. Vikas Chaudhary, learned counsel for appellant/owner and driver (in FAO No.3531 of 2013) submits that the Tribunal has committed illegality and perversity by giving the recovery rights to the Insurance Company on the ground that driver of the Jeep had the licence of Light Motor Vehicle. In support of his contention, he relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Mukund Dewangan vs. Oriental Insurance Company 2017(3) Law Herald (P&H) 1857 SC**. He, thus, submits that aforementioned findings are liable to be set aside.

Ms. Priya Deep, Advocate, for Mr. Aftab Singh Khaira, Advocate for respondents No.1 to 5/claimants submits that the Tribunal has granted paltry amount of ₹19,65,200/-including ₹10,000/- for transportation, ₹20,000/- towards love and affection and ₹10,000/- on account of funeral expenses, but failed to award any compensation under the head of loss of consortium, therefore, the amount is liable to be enhanced.

In rebuttal, Mr. Suman Jain, Advocate submits that despite fastening of liability on the Insurance Company of Tata 407 with regard to compensation under conventional head, the Tribunal has awarded ₹1,40,000/-, whereas, it should have been ₹70,000/- as per the ratio decidendi culled out by the Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others. The future prospectus should have been 25% instead of 30% as the deceased was 48 years of age.

I have heard learned counsel for the parties, appraised the paper book and am of the view that there is no force and merit in the submission of Mr. Jain, *vis-a-vis* fastening of liability to the extent of 50% on the Insurance Company of Tata 407 as the Insurance Company was liable to summon the Investigating Officer in the FIR No.799 dated 29.09.2011 registered under Sections 279, 304A, 427 IPC with Police Station Sadar, Hisar regarding the factum of accident. The statement of Dharampal son of Daulat Ram and cross examination read as under

> *"Sunita etc. versus Balwan etc.*
>
> *PW2 on SA*
>
> *Dharampal son of Daulat Ram, 55 years, Service Resident of VPO Mayyar, Tehsil and District Hisar.*
>
> *Stated that I tender into evidence my affidavit Ex.PW2/A and the same be read as part and parcel of my evidence. I also tender copy of PMR Ex.P2, copy of report under Section 173 Cr.P.C. Ex.P3 and copy of FIR Ex.P4.*
>
> *XXXXXXXn by counsels for the respondents No.1 to 3.*
>
> *I had seen the accident from a distance of about 50 yards. I was on my motor cycle bearing No.HR-20Q-9937 behind the deceased, who was on his motor cycle bearing No.HR-20S-9883. Police had taken into possession four vehicles involved in the accident and mechanical report of the said vehicles. I have seen Ex.R1, which bears my signatures and on the said statement, the FIR was lodged by me. Mechanical report is*

Mark R1. It is incorrect that I have narrated wrong facts in para 1 to 3 of the affidavit. It is incorrect that Jeep in question has been falsely involved as an offending vehicle in the alleged accident. It is incorrect that I am a procured witness no accident took place in my presence. Sunita is living with me at my residence. It is incorrect that I am deposing falsely.

XXXXXXn by counsels for the respondents No.4 to 6.

It is incorrect that the said accident had not taken place with canter No.HR-39-6746. It is correct that I have not annexed any documentary proof with my affidavit regarding employment and salary of my deceased brother."

Cross-examination

"Smt. Sunita & others ....Petitioners

Versus

Sh. Balwan & others ....Respondents

Affidavit:-

I, Dharampal s/o Sh. Daulat Ram, aged 55 years, r/o VPO Mayar, Tehsil & Distt. Hisar, do hereby solemnly affirm& declare as under:-

01. That Ram Gopal, deceased was my younger brother aged 44 years. He was working as Building Supervisor with M/s HMS Buildcon Pvt. Ltd., Hisar in Hisar Cantt. Area and was getting salary of Rs.12,000/- p.m from the company.

02. That on 29.09.2011, at about 11.45 a.m., Sh. Ram Gopal *(deceased) was coming on Motor Cycle No.HR-20S-9833 after purchasing goods from the market situated opp. Main Gate of Hisar Cant and was going to TCP Gate No.4 of Hisar Cant. When he reached Opp. S.B.Oil Mills, Delhi Road, Hisar, then Jeep No.HR-08C-0975 driven by respondent No.1 in a rash and negligent manner, being driven at a high speed and after overtaking many vehicles came from backside of the Motor Cycle and struck his jeep with the Motor Cycle from behind. Tata 407 No.HR-39-6746 was also coming from the opposite side after overtaking the vehicles. Thus, the 0975 and Tata 407 No.HR-39-6746. Due to the striking of the Jeep with Motor Cycle, Sh. Ram Gopal suffered multiple, serious and grievous injuries and died at the spot. This accident was witnessed by me (brother of the deceased) as I was also coming on my Motor Cycle after purchasing goods from the Market situated Opp. Hisar Cantt. I have seen the accident. The Police came to the spot and I informed the police about the accident. The police registered the case on my statement and registered the case vide FIR No.799 dated 29.09.2011 in Police Station, Sadar Hisar. I have brought the certified copy of the FIR, certified copy of report under Section 173 Cr.P.C and certified copy of postmortem report.*

That the deceased was working as a Building Supervisor with M/s HMS Buildcon (P) Ltd. SCO 85, PLA, Shopping Complex, *Near Town Park, Hisar and was looking after the construction work in Hisar Cantonment area, where M/s HMS Buildcon (P) Ltd. were having contracts for the construction. All the petitioners had high hopes on the deceased and by his hard work and his income was sure to rise in future. All the petitioners were dependent upon the deceased for their livelihood and they have host husband/father/son and all their hopes of good future life have been demolished.*

Deponent."

On going through the aforementioned statement and cross-examination, it is revealed that except bald suggestion to the eye witness, appellant-Insurance Company of Tata 407 failed to lead any evidence *vis-a-vi*s rash and negligent driving, therefore, in my view, the findings of the Tribunal qua fastening of liability are upheld.

As regards the enhancement of compensation on behalf of the claimants in cross-objections No.68-CII of 2014, I take the income of the deceased as Rs.12,000/- per month as has been taken by the Tribunal and provide 25% future prospectus instead of 30% and apply a multiplier of '13', much less, deduction of 1/4th to assess the loss of dependency as ₹17,55,000/-.

As regards the grant of compensation towards conventional heads, the Tribunal has already granted ₹1,40,000/- towards conventional heads, i.e. Loss of love and affection, medical expenses and funeral expenses. I hereby reduce the same from ₹1,40,000/- to ₹70,000/-towards conventional heads, i.e., loss of estate, loss of consortium and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in SLP (Civil) No.25590 of 2014 titled as National Insurance Company Ltd. Vs. Pranay Sethi and others" and by exercising the power under Order 41 Rule 33 CPC as per the ratio decidendi culled out by the Hon'ble Supreme Court in "U.P.S.R.T.C. vs. Km. Mamta and others (2016) 4 SCC 172.

Resultantly, the amount of compensation as awarded by the Tribunal is reduced to ₹18,25,000/- from ₹19,56,000/-, hence the cross objections at the instance of the claimants are dismissed.

The cross objections seeking enhancement of compensation are hereby dismissed.

I am of the view that finding of the Tribunal in giving the recovery rights to the Insurance Company of Jeep as the driver did not have the licence of Light Motor Vehicle, is not correct appreciation of the Act and law, ibid. For the sake of brevity, the findings rendered by the Hon'ble Supreme Court in Mukund Dewangan (supra) read thus:-

> *"8. Before dilating further, it is necessary to consider other definitions as 'gross vehicle weight' has co-relation with the classification of vehicles into a light motor vehicle, medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, and heavy passenger motor vehicle.*
>
> *The definitions of aforesaid class of vehicles are extracted hereunder:*
>
> *"2. Definitions.*
>
> > *(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-*

> *roller the unladen weight of either of which, exceeds 12,000 kilograms;*
>
> *(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;*
>
> *(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 2[7500] kilograms;*
>
> *(23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;*
>
> *(24) "medium passenger motor vehicle" means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;"*

9. The definition of 'gross vehicle weight' and 'unladen weight' are also significant as the expression finds a place in the aforesaid definitions. Said definitions in sections 2(15) and2 (48) are as under:

> *"2(15) "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle; "2 (48) "unladen weight" means the weight of a vehicle or trailer including all equipments ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;*

10. 'Transport vehicle' has been referred in section 2(47) of the Act thus:

"2 (47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;" Various expressions find a place in the aforesaid definition of 'transport vehicle'. Each of them has been defined separately and they are extracted thus:

"2 (11) "educational institution bus" means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

2 (14) "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

2 (33) "private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;

2 (35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motor cab, contract carriage, and stage carriage;"

11. 'Motor car', 'omnibus' and 'tractor' have been defined in the Act thus:

"2(26) "motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage;

2(29) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;

2(44) "tractor" means a motor vehicle which is not itself constructed to; carry any load (other than equipment used for the purpose of propulsion), but excludes a road-roller;"

12. Section 9 of the Act deals with grant of driving licence. Any person can apply for driving licence unless he is disqualified for holding or obtaining a driving licence. The application has to be filed in such form as may be prescribed by the Central Government as provided in section 9(2). The applicant has to pass a test also, as provided in section 9(3). It is further provided in section 9(4) that a person applying for the licence to drive a transport vehicle shall possess such minimum educational qualification as may be prescribed by the Central Government. Licensing authority may refuse to issue a licence to a habitual criminal or a habitual drunkard or who is habitually addicted to any narcotic drug or psychotropic substance or whose licence had been revoked earlier.

13. Prior to amendment in 1994 licence for transport vehicle was clearly covered as per section 10(2) in five categories, i.e., Section 10(2)(d) light motor vehicle, Section 10(2)(e) medium goods vehicle, Section 10(2)
(f) medium passenger motor vehicle, Section 10(2)(g) heavy goods vehicle and Section 10(2)(h) heavy passenger motor vehicle. The licence for 'light motor vehicle' has been provided in section 10(2)(d). The expression 'transport vehicle' has been inserted by virtue of Amendment Act 54/1994 in section 10(2)(e) after deleting four categories or classes of vehicles, i.e. medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, and heavy passenger motor vehicle. Earlier Section 10 did not contain the separate class of transport vehicles.
14. The definition of 'light motor vehicle' makes it clear that for a transport vehicle or omnibus, the gross vehicle weight of

either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kgs. 'Gross vehicle weight' has been defined in section 2(15). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in section 2 (48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in sections 2(21) and 10(2)(d) relating to the light motor vehicle. The definition of 'light motor vehicle' has to be given full effect to and it has to be read with section 10(2)(d) which makes it abundantly clear that 'light motor vehicle' is also a 'transport vehicle', the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in section 2(21) of the Act. The provision of section 3 of the Act requires that a person in order to drive a 'transport vehicle' must have authorization. Once a licence is issued to drive light motor vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of 'transport vehicle' category in section 10(2)(e) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle. A distinction is made in the Act of heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle on the basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger motor vehicle, heavy goods vehicle, the weight, as the case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or

> *educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.*
>
> *Thus, the newly incorporated expression 'transport vehicle' in section 10(2)(e) would include only the vehicles of the category as defined in section 2(16)- heavy goods vehicle, section 2(17)- heavy passenger motor vehicle, section 2(23)– medium goods vehicle and section 2(24) medium passenger motor vehicle, and would not include the 'light motor vehicle' which means transport vehicle also of the weight specified in Section 2(21).*"

As per the aforementioned ratio decidendi culled out by the Supreme Court of India, I am of the view that findings of Tribunal *vis-a-vis* giving recovery rights were not justified and hereby set aside. There is no force in the argument of Mr. Jain that registration of FIR would fasten liability in the absence of direct and cogent evidence and even no evidence has been led to establish its mode of liability fastened upon him.

The appeal bearing No.3531 of 2013 filed by the owner and driver is allowed and appeal bearing No.2884 of 2013 on behalf of the Insurance Company and the cross objections bearing No.68-CII of 2014 are hereby dismissed.

(AMIT RAWAL)
JUDGE

January 09, 2018
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No