In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 30.5.2018

FAO- 1211 of 2016(O&M)

Oriental Insurance Company Limited

---Appellant

vs.

Gurmeet Kaur and others

---Respondents

FAO- 1212 of 2016(O&M)

Oriental Insurance Company Limited

---Appellant

vs.

Usha Rani and others

---Respondents

FAO- 2631 of 2016(O&M)

Usha Rani and others

---Appellants

vs.

Sandeep Singh @ Mandeep Singh and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.R.N.Singal, Advocate
for the Oriental Insurance Company
Ms. Monika Arora, Advocate for
Mr. Navin Saini, Advocate
for the appellants in FAO-2631 of 2016
Respondents No. 1 and 2 in FAO-1212 of 2016 already ex parte
Mr. Neeraj Khanna, Advocate
for respondents No. 3 and 4 in FAO-1212 of 2016
Ms. Amandeep Kaur, Advocate
for respondents No. 1 and 2

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1211, 1212 and 2631 of 2016 as these have emanated out of the same accident in which Harminder Singh, driver and Avtar Singh, pillion rider on Scooter No. PB-11-M-3796 succumbed to injuries sustained on account of rash and negligent driving of car No. CH-01-AL-1492 by Sandeep Singh @ Mandeep Singh on the fateful day of 21.11.2014.

FAO No. 1211 of 2016 has been filed by the Oriental Insurance Company Limited (hereinafter to be referred to as "the insurance company") to assail the award passed in favour of Smt. Gurmeet Kaur and others on account of death of Harminder Singh whereas the other two appeals FAO No. 1212 of 2016 filed by the insurance company and 2631 of 2016 by claimants Usha Rani and others pertain to compensation qua death of Avtar Singh.

FAO No. 1211 of 2016

The first submission made by counsel for the insurance company is that with regard to occurrence in question, Harjinder Singh, who was allegedly following scooter No. PB-11-M-3796 driven by Harminder Singh lodged FIR No. 173 dated 21.11.2014 at Police Station, Phase-VIII SAS Nagar under Sections 279, 337 and 427 of the Indian Penal Code against one Mandeep Singh son of Malkiat Singh, an injured in the occurrence and was admitted in the hospital by said Harjinder Singh. It is argued that as Mandeep Singh son of Malkiat Singh, brother of Sandeep Singh (respondent No. 3) was minor at the time of occurrence and did not possess a driving licence, Harjinder Singh changed his first version by claiming that the offending car was driven by Sandeep Singh son of Malkiat Singh, therefore, the insurance company is not liable to pay compensation.

Counsel representing the claimants has supported findings of the Tribunal upholding plea of the claimants that accident took place due to rash and negligent driving of offending vehicle by Sandeep Singh son of Malkiat Singh.

Harjinder Singh appeared in the witness box and tendered into evidence his affidavit Ex. PW2/A by way of examination -in-chief. He has reiterated version of the claimants that accident took place due to rash and negligent driving of offending car by Sandeep Singh. In the concluding line of his affidavit, he would state that a criminal case was registered against Sandeep Singh for causing the accident on the basis of his statement. The witness was cross examined at length by counsel for the respondents before the Tribunal. He was not confronted with contents of the FIR much less to seek his explanation as to why there is discrepancy in the FIR and his testimony before the Tribunal with regard to name of driver of the offending car. On the contrary, it was suggested to him that accident took place due to imbalancing of the scooter due to over loading; no accident was caused by car No. CH-01-AL-1492; car has been falsely implicated in order to help the claimants to get undue compensation; FIR was lodged by him on wrong facts and that false case was registered against respondent No. 1. This apart, counsel for the insurance company has failed to point out any materials on record to show that Mandeep Singh whose name finds mention in the FIR was minor or did not possess a driving licence at the time of occurrence. In this view of the matter, contention raised by counsel for the insurance company is not meritorious and liable to be rejected.

To challenge quantum of compensation assessed by the Tribunal, it is argued that the deceased was 17 years old student of 11th standard, therefore, income of the deceased assessed by the Tribunal is liable to be reduced. In addition, it is argued that as the Tribunal has assessed notional income of the deceased, claimants are not entitled to benefit of future prospects. Compensation allowed under conventional heads needs to be restricted to Rs. 30,000/-.

Counsel representing the claimants has supported assessment of compensation by relying upon judgment of Hon'ble the Supreme Court **V. Mekala vs. M. Malathi and another 2014 STPL (Web) 339 SC.**

The Tribunal, in para 15 of the award, has noticed that in the cited judgment deceased was a bright student of 11th standard holding first rank in her school. Perusal of Matriculation certificate of the deceased Ex. P2 reveals that he had scored less than 60% marks and as such he cannot be termed as a brilliant student. Further held that it would be highly speculative to draw an inference that a student who is weak in school may prove himself much better in college. By taking a clue from minimum wage for an unskilled labour in area of Chandigarh at the relevant time, income of the deceased has been assessed at Rs. 7688/- per month. The Tribunal has failed to appreciate that deceased was a resident of Kandala, District Mohali. The minimum wage of an unskilled labour fixed by the Government of Punjab at the relevant time was approximately Rs. 6500/- per month. As the deceased was matriculate and a student of 11th standard, interest of justice would be served if income of the deceased is assessed at Rs. 7000/- per month. Claimants cannot be denied benefit of increase in income for future prospects @ 40%. In this context, reference can be made to judgment of this Court "**National Insurance Company limited vs. Pushpa Singh Chauhan and others" FAO No.1502 of 2015, decided on 20.03.2015** affirmed by Hon'ble the Supreme Court in Special Leave Petition No. 19533 of 2015. The Tribunal has rightly applied multiplier of 18 and deduction of 50% for personal expenses in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (3)RCR (Civil) 77**. In this manner, loss of dependency is calculated at **Rs.10,58,400/-** [7000 X 12 X 18 = 15,12,000 + 6,04,800 (40%) = 21,16,800 -10,58,400(50%)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that the claimants shall be entitled to **Rs. 30,000/-** i.e. Rs. 15,000/- for funeral expenses and another Rs. 15,000/- for loss of estate.

Total compensation is Rs. 10,88,400/-. Compensation awarded by the Tribunal is reduced to the extent of **Rs. 3,07,100/-**(13,95,500 -10,88,400). The excess amount, if already paid, may be recovered by the insurance company by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO Nos. 1212 and 2631 of 2016

In view of findings recorded in FAO No. 1211 of 2016, claimants are held entitled to compensation of **Rs.10,88,400/-.**

Counsel for the claimants would urge that Avtar Singh deceased was shifted to Fortis Hospital, Mohali. The Tribunal has not allowed reimbursement of medical expenses on the basis of documents Ex. C-7 and C-8.

Perusal of documents Ex. C-7 and C-8 would reveal that an amount of Rs. 2000/- was paid towards charges of Ambulance and Rs. 35,000/- towards advance. Counsel for the claimants would fairly inform that Avtar Singh died within a short span after his admission in Fortis Hospital. Claimants have not produced any bill qua expenses incurred on treatment of Avtar Singh. In the circumstances, claimants are awarded a sum of **Rs. 5000/-** towards expenses incurred on treatment of the deceased.

Total compensation is **Rs. 10,93,400/-.** Compensation awarded by the Tribunal is reduced to the extent of **Rs. 84,600/-**(11,78,000-10,93,400). The excess amount, if already paid, may be recovered by the insurance company by filing an appropriate application before the Tribunal.

For the reasons stated hereinbefore, the appeal filed by the insurance company is partly allowed. As a natural corollary, appeal filed by the claimants is dismissed.

(Rekha Mittal)
Judge

30.5.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No