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

209

Date of Decision : 01.11.2018

1. FAO No. 4711 of 2014 (O&M)

Bajaj Allianz General Insurance Co., Ltd.
...... Appellant

Versus

Surender and others
...... Respondents

2. FAO No. 5901 of 2014 (O&M)

Surender and others
...... Appellants

Versus

Subhash and others
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
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Present : Ms. Vandana Malhotra, Advocate
for the appellants (FAO-4711-2014).
for respondent No.3 (FAO-5901-2014).

Mr. J.P.Sharma, Advocate
for the appellants (FAO-5901-2014).
for respondents No.1 to 3 (FAO-4711-2014).

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AJAY TEWARI, J. (Oral)

CM-16340-CII of 2014 in FAO-5901-2014

For the reasons recorded, the application is allowed. Delay of 21 days in filing the appeal is condoned.

<u>Main case</u>

This order shall dispose of above mentioned two appeals. ***FAO No.4711 of 2014*** has been filed by the insurance company and ***FAO No.5901 of 2014*** has been filed by the claimants for enhancement of compensation.

These two appeals have been filed against the award dated 15.01.2014 passed by the Motor Accidents Claims Tribunal, Narnaul awarding a sum of Rs.5,64,320/- for the death of Vijay Pal-deceased. Since a very limited point has been raised further detailed reference to the facts is not necessary.

The contention of the learned counsel for the insurance company is that in the FIR it was shown that the accident had taken place with an unknown vehicle and it is her contention that the tractor in question has been falsely involved.

Counsel for the claimants has countered this argument by pointing out that in the accident two persons who were riding on the motor cycle were involved and while Vijay Pal had died, Ramesh had suffered injuries. Two claim petitions had been filed which had been tried together and in his testimony where he had appeared as his own witness the injured, Ramesh had explained how the accident had taken place and it was on the basis of that explanation that the tribunal had come to the conclusion that despite there being no number mentioned in the FIR, the claimants had been able to prove their case by preponderance of probability.

I agree with the arguments of learned counsel for the insurance company. Ramesh was the author of the FIR. It is not disputed that he was seriously injured. Obviously, when he was taken to hospital, a medico-legal case had arisen and that is why the police had come to lodge the FIR. It is not unbelievable that at that point of time he was not in a position to give the full details.

In the circumstances, the argument of learned counsel for the insurance company is rejected.

The second argument raised by the learned counsel for the insurance company is that once it was shown that Subhash was driving the tractor along with trolley he had to be in possession of a commercial driving licence.

Counsel for the claimants has argued that there was no evidence that the tractor was being used for a commercial purpose. Counsel for the insurance company states that in ***Special Leave to Appeal (C) No.27787 of 2017*** titled ***M/s Bajaj Alliance General Insurance Co., Ltd. Vs. Rambha Devi & ors.*** this matter has been referred to the larger Bench. However counsel for the claimants states that the judgment which is still ruling the field is ***Mukund Dewangan Vs. Oriental Insurance Company Limited 2017 (7) Scale 731.***

In the circumstances, I reject this contention also.

Consequently FAO No.4711 of 2014 is dismissed.

Coming to ***FAO No.5901 of 2014***, learned counsel for the claimants has argued that Vijay Pal was 41 years old and states that according to the schedule of minimum wages prescribed at that relevant time the salary of an un-skilled worker was Rs.4,643/- say Rs.4,700/-.

Counsel for the insurance company however points out that the deduction of 1/10th which was made by the tribunal was too low. I accept this argument and direct that the deduction would be 1/3rd.

Counsel for the claimants has argued that in view of the judgment passed in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009,*** 25% had to be awarded on account of future prospects. I find this to be indeed so. It is held that 25% has to be awarded towards future prospects.

He further states that in view of the judgment of the Supreme Court in the matter of ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*** the multiplier of 14 had to be applied instead of 12. In view of ***Sarla Verma (supra)*** this argument is also accepted. It is held that multiplier of 14 has to be applied instead of 12.

It is further argued that only Rs.20,000/- had been awarded under the conventional heads. I deem it appropriate to award Rs.10,000/- more under the conventional heads and an amount of Rs.40,000/- each as filial consortium to the two minor sons in view of the latest judgment of the Supreme Court passed in ***Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018.***

Apart from the individual amounts awarded, the enhanced compensation will be equally divided between the three claimants. The share of the minors would be put in a fixed deposit and would be released only when they become major.

Counsel for the claimants states that interest @7.5% per annum has been granted in this case. I deem it appropriate to grant interest @12% per annum on the entire compensation from the date of filing of claim petition till the date of payment in view of the judgment passed in ***Magma General Insurance Company Ltd. supra***.

Appeal is allowed in the above terms and the award is modified accordingly.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

01.11.2018
pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No