In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:3.4.2018

FAO No. 4981 of 2015(O&M)

Sunder Singh and others

---Appellants

vs.

Angrej Singh and others

---Respondents

FAO No. 4990 of 2015(O&M)

National Insurance Company Limited

---Appellant

vs.

Sunder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Vinod Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants in FAO-4981 of 2015
for respondents No. 1 to 4 in FAO- 4990 of 2015

Mr. R.C.Kapoor, Advocate
for the appellant-insurance company in FAO-4990 of 2015

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Rekha Mittal, J.

This order will dispose of FAO Nos. 4981 and 4990 of 2015 as these have emerged out of the same award dated 23.4.2015 passed by the Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") whereby compensation has been awarded on account of death of Muskan @ Monika in a motor vehicular accident that took place on 8.4.2014.

FAO No. 4981 of 2015 has been filed by the claimants seeking enhancement of compensation whereas FAO No. 4990 of 2015 has been filed by the National Insurance Company Limited (hereinafter to be referred to as "the insurance company").

FAO Nos. 4981 and 4990 of 2015

Counsel for the appellant-insurance company has assailed findings of the Tribunal on issue No. 1 by contending that as three persons were travelling on motor cycle No.HR-05-Q-5417 driven by Tinku PW2, on which Sonia wife of Labh Singh and Muskan (since deceased) were travelling on pillion seat, therefore, the claimants cannot be allowed to take advantage of the wrong committed by driver of the aforesaid motor cycle and its pillion riders who were travelling on a two wheeler in utter violation of provisions of Section 128 of the Motor Vehicles Act, 1988 (in short "the Act").

The second submission made by counsel is that the Tribunal has assessed income of the deceased at Rs. 7000/- per month being a household lady but the same is on higher side. In addition, it is argued that deduction for personal expenses of the deceased is liable to be made. In this context, reference has been made to judgment of Hon'ble the Supreme Court **Jitendra Khimshankar Trivedi and others vs. Kasam Daud Kambhar and others 2015 ACJ 705.**

Another submission made by counsel is that respondent No. 1, driver of the offending truck was not possessing a valid licence at the time of accident, therefore, the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative right of recovery against the insured after payment to the claimants.

Counsel representing the claimants has supported findings of the Tribunal on issue No. 1 with the submission that there is nothing on record suggestive of the fact that the accident occurred due to three persons travelling on the motor cycle driven by Tinku. It is argued that the claimants have successfully proved that the accident was caused by the offending vehicle driven by Angrej Singh that came from behind and hit the motor cycle as a result of which, riders of the motor cycle fell down and truck run over Muskan @ Monika.

To refute contention of the insurance company qua income assessed by the Tribunal, it is argued that income is liable to be enhanced and no deduction for personal expenses is to be made. In support of his contention, he has relied upon judgment of this Court **United India Insurance Company Limited vs. Sube Singh and others** FAO No. 218 of 2014 decided on 15.1.2014 that stood affirmed by Hon'ble the Supreme Court in petition for Special Leave to Appeal (Civil) No. 14334 of 2014 (United India Insurance Company Limited vs. Sube Singh and others) decided on 8.9.2014. The Division Bench judgment of this Court **Paramjit Singh and another vs. Dilbagh Singh alias Bagga and others 2014(4)R.C.R.(Civil)895** has been relied upon to contend that no deduction for personal expenses is permissible in the given scenario. He has also supported findings of the Tribunal on issue No. 3 and that the insurance company is jointly and severally liable to pay compensation to the claimants.

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

No doubt, two persons namely Sonia and Muskan @ Monika were travelling on the pillion seat of motor cycle driven by Tinku. The mere fact that three persons were travelling on the two wheeler in violation of Section 128 of the Act is not sufficient to attribute negligence to the deceased. Counsel for the insurance company has failed to point out any materials on record that because of three persons travelling on the motor cycle it attributed in any manner for the occurrence to happen. That being so, contention raised by counsel for the insurance company is not tenable. In this context, reference can be made to judgments of this Court **Banwari Lal and another vs. Ran Singh and others** FAO No. 2191 of 2014 decided on 23.8.2016 and **Karnail Singh and others vs. Balwinder Singh and another 2014 (7) RCR (Civil) 177**.

Much stress has been laid by counsel for the insurance company that deduction for personal expenses is required to be made while computing loss of dependency. The judgment of Hon'ble the Supreme Court in **Jitendra Khimshankar Trivedi and others' case (supra)** has not laid down any ratio that if the deceased happens to be a house maker and compensation has been assessed on the basis of loss of her services, deduction for personal expenses is required to be made. The mere fact that Hon'ble the Supreme Court has affirmed the award wherein deduction for personal expenses to the extent of 1/3rd had been made but without any issue in this regard being raised and decided, the insurance company cannot derive any advantage to its contention from the referred authority. On the contrary, no such deduction for personal expenses is to be made, in the light of Division Bench judgment of this Court **Paramjit Singh and another's case (supra).**

This brings the court to quantum of compensation assessed by the Tribunal. The deceased was 26 years old at the time of death. She left behind her husband and three minor children aged 6 years, 4 years and 1½ years. This Court in **Sube Singh and others' case (supra)** affirmed the award assessing value of services of a house maker @ Rs. 9000/- per month in a case pertaining to November 2012 and the judgment passed by this court was affirmed by Hon'ble the Apex Court by holding that no ground for interference is made out in exercise of jurisdiction under Article 136 of the Constitution of India. Taking into consideration judgment in **Sube Singh and others' case (supra)**, contention of the insurance company that income of the deceased is liable to be decreased is misconceived and accordingly rejected. On the contrary, in view of age of the deceased coupled with that deceased left behind three minor children of tender age at the mercy of others, value of services of the deceased is assessed at Rs. 9000/- per month. Multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs. 9000 x 12 x 17=18,36,000/-.

Under conventional heads, the Tribunal has awarded an amount of Rs. 1,00,000/- for loss of consortium, Rs. 1,00,000/- each on account of loss of love and affection, care and guidance to the minor claimants and Rs. 25,000/- for funeral expenses. In the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**, compensation under conventional heads is modified to the effect that claimants shall be entitled to Rs. 55,000/-, detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-.

Total compensation is Rs. 18,91,000/- and the additional amount is Rs. 38,000/- (18,91,000 – 18,53,000), payable with interest @ 7.5% per annum from the date of petition till realization.

For the foregoing reasons, appeal filed by the insurance company stands disposed of. However, appeal filed by the claimants is partly allowed in the aforesaid terms. No order as to costs.

(Rekha Mittal)
Judge

3.4.2018
paramjit

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