In the High Court of Punjab and Haryana at Chandigarh

FAO-9043 of 2014(O&M)
Date of Decision:30.4.2018

HDFC Ergo Insurance Company Limited

---Appellant

vs.

Fekna Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sanjeev Goyal, Advocate
for the appellant
Mrs. Ekta Thakur, Advocate
for respondents No. 1 to 4 and 6
Mr. Rajesh Sood, Advocate
for Mr. Sidharth Grover, Advocate
for respondents No. 7 and 8

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Rekha Mittal, J.

The present appeal directs challenge against award dated 28.4.2014 whereby compensation has been awarded on account of death of Gian Chand in a motor vehicular accident that took place on 7.12.2012.

The facts relevant for disposal of the present appeal are that as per case of the claimants/respondents, on 7.12.2012, Gian Chand had gone to Sector 32, Chandigarh for dropping his son at the school. When he was returning to his house on motor cycle No. CH-03-Q-0358 and reached near S.D.Mandir, Sector-32 Chandigarh, car No. CH-01-AC-0555 driven by Pranav Bhasin came in a rash and negligent manner and hit motor cycle of the deceased. Gian Chand fell down on the road alongwith motor cycle and suffered multiple grievous injuries. Eventually, injured died in Government Medical College and Hospital, Sector-32, Chandigarh on 11.12.2012. The deceased is stated to be a car mechanic, earning Rs. 8,000/- per month. The application for compensation was filed by the widow, daughters and sons of deceased Gian Chand.

The Driver and owner of the offending vehicle (respondents No. 1 and 2 therein) filed reply and in turn, controverted allegations that accident was the result of rash and negligent driving of offending vehicle by its driver with the plea that the car was driven at a slow speed in a safe manner and Yusuf Masih was sitting beside driver at the time of accident.

The insurance company also filed reply, raised a plea that driver was not holding a valid and proper licence and the insurer is not liable to indemnify owner of the offending vehicle who is guilty of violating the terms and conditions of the policy. It is also denied that the offending vehicle was involved in the accident.

The Tribunal framed the following issues for determination:-

1. Whether deceased Gian Chand suffered injuries in an accident which took place on 7.12.2012 at about 7:15 a.m. near S.D. Mandir, Sector 32, Chandigarh on account of rash and negligent driving of vehicle No. CH-01-AC-0555 by its driver?OPP
2. Whether the claimants are entitled to any compensation on account of death of deceased caused in an accident as alleged, if so, to what extent and by whom?OPP
3. Whether the driver of offending vehicle was not holding a valid & effective driving licence on the date of accident and the vehicle was being driven in violation of terms and conditions of the Insurance Policy? OPR3

4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No. 1 in favour of the claimants and accordingly compensation was assessed under issue No. 2 and the respondents were held jointly and severally liable to pay compensation by negating plea of the insurance company that driver of the offending vehicle did not possess a valid licence on the date of occurrence.

The Tribunal assessed compensation of Rs. 11,81,065/-, detailed hereunder:-

Monthly income of the deceased	Rs. 6000/-
Addition for future prospects	30%
Deduction for personal expenses	$1/4^{th}$
Multiplier	14
Loss of dependency	Rs. 9,82,800/-
Funeral expenses	Rs. 25,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection to children	Rs. 50,000/-

Counsel for the insurance company has challenged the award primarily on three counts. The first submission made by counsel is that findings recorded by the Tribunal on issue No. 1 are not based upon correct appreciation of evidence i.e. testimony of Jatinder Kumar, an alleged eye witness to the occurrence and one of the claimants, Parnav Bhasin RW1 and Yusuf Masih RW2. It is argued with vehemence that Jatinder Kumar was not present at the spot and has been introduced as a witness to support cause of the claimants including that of Jatinder Kumar himself. To substantiate his contention, it is argued that as per version of Jatinder Kumar, he had gone to temple i.e. S.D.Madir, Sector -32, Chandigarh to meet Pandit ji. In his cross examination, he has stated that he had not entered the mandir as he had just reached. He did not remember the exact time after which Pandit ji met him. Volunteered. Pandit ji met him after the accident. According to counsel, it does not appeal to reason that if Jatinder Kumar had seen the occurrence in which his father sustained serious injuries, he would still wait for meeting Pandit ji.

Another submission made by counsel is that as the present is a case of head-on collision between the motor cycle driven by the deceased and car by Parnav Bhasin, contributory negligence is liable to be attributed to the deceased and accordingly, the claimants shall not be entitled to compensation to the extent of negligence attributed to the deceased.

The Second submission made by counsel is that Parnav Bhasin had not affixed the sign of 'L' on his car as he was in possession of learner's licence, therefore, the insurance company is entitled to be exonerated of liability or right of recovery.

To challenge quantum of compensation, counsel has three fold submissions to make. Income of the deceased assessed by the Tribunal is more than minimum wage available at the relevant time. Claimants shall be entitled to addition in income for future prospects @ 25%. Compensation allowed under conventional heads needs to be restricted to Rs. 70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**.

Counsel representing the claimants has supported findings of the Tribunal on issues No. 1 to 3. It is argued that testimony of Jatinder Kumar is more than sufficient to establish that accident was the result of rash and negligent driving of car by Parnav Bhasin. It is further argued that no such fact has been deposed by Parnav Bhasin and Yusuf Masih that the occurrence was a head on collision much less negligence for causing the accident can be attributed to the deceased.

Counsel representing the owner and driver of the offending vehicle has supported findings of the Tribunal on issue No.3 on the premise that Parnav Bhasin was holding a valid learner's licence who has also displayed the sign of 'L' on the car.

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

Jatinder Kumar has stated in his cross examination that he witnessed the occurrence as he was available out side S.D. Temple, Sector-32, Chandigarh where he had gone to meet Pandit ji. He has categorically deposed that he had not entered the mandir when the accident took place. There is nothing in the testimony of Jatinder Kumar that after the accident, he entered the temple and met Pandit ji in order to say that his conduct is unnatural. Jatinder Kumar has deposed in later part of his cross examination that PCR had taken his father to hospital, Sector-32, Chandigarh. He had not accompanied the police officials to the hospital. He followed the police officials. Counsel for the respondents before the Tribunal failed to elicit any materials on record to doubt correctness of statement of Jatinder Kumar or his being not an eye witness to the occurrence. This apart, Parnav Bhasin, driver of the offending vehicle has not denied the accident but has appeared in the witness box to say that the deceased was driving his motor cycle at a very high speed in a rash and negligent manner and came to wrong side. The witness has expressed his opinion but did not give the facts as to what was the speed of motor cycle, how the driver was rash and negligent and came to wrong side. Both Parnav Bhasin and Yusuf Masih have not stated that the accident was a head on collision though it has been stated that the vehicle came from the opposite direction.

A conjoint reading of testimony of Jatinder Kumar, Parnav Bhasin and Yusuf Masih does not give an inkling that the accident was the result of rash and negligent driving attributable to the deceased or the present is a case of contributory negligence of both the vehicles involved in the accident. In this view of the matter, I do not find an error much less illegality in findings recorded by the Tribunal on issue No. 1.

The plea of the insurance company that driver of the offending vehicle was not possessing a valid driving licence is not meritorious and has rightly been rejected by the Tribunal. Parnav Bhasin was holding a learner's licence which authorised him to drive the vehicle in question. Parnav Bhasin has categorically deposed that he has put the sign of 'L' on the car and he was accompanied by Yusuf Masih, a trained driver at the relevant time. In view of the above, contention of the insurance company to assail findings of the Tribunal on issue No. 3 is misconceived and untenable.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has assessed income of the deceased at Rs. 6000/- per month. Deceased left behind family consisting of his widow and five children. Taking a clue from the minimum wage available at the relevant time coupled with the number of members of the family dependent on his earning, I do not find any reason to interfere in assessment of income by the Tribunal.

Contention raised by counsel for the insurance company with regard to addition for future prospects @ 25% and compensation under conventional heads to be restricted to Rs. 70,000/- is meritorious when examined in the light of judgment in **Pranay Sethi and others case (supra).** Accordingly, loss of dependency comes to Rs.9,45,000/-[6000 x 12x 14= 10,08,000+ 2,52,000(25%) = 12,60,000 -3,15,000(1/4th)] .

Under conventional heads, claimants shall be entitled to Rs. 70,000/-, detailed hereunder:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

In this manner, total compensation is Rs. 10,15,000/- and compensation awarded by the Tribunal is reduced to the extent of Rs. 1,66,065/- (11,81,065-10,15,000).

For the foregoing reasons, appeal filed by the insurance company is partly allowed in the aforesaid terms. The insurance company shall be entitled to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal. No order as to costs.

(Rekha Mittal)
Judge

30.4.2018
paramjit

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