IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

__FAO No.7304 of 2017 (O&M)__
Date of Decision: May 04, 2018

Bajaj Allianz General Insurance Company Ltd. ...Appellant

Versus

Rajjo Devi and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Ms.Vandana Malhotra, Advocate
for the appellant – Insurance Company.

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__HARINDER SINGH SIDHU, J.__

For the reasons stated in the application, delay of 16 days in filing the appeal is condoned.

The insurer has filed the present appeal challenging the award dated 12.7.2017 passed by the Motor Accident Claims Tribunal, Fatehabad (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 12.7.2016 in the area of Village Dhani Miyan Khan, District Fatehabad a vehicular accident took place involving three-wheeler No.HR-62-7679 (herein for short 'the offending vehicle'), wherein, Naresh lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered on the same day.

On a claim petition having been filed by the legal representatives of Naresh, the Tribunal assessed the income of the deceased at Rs.6000/-

per month, added 50% on account of future prospects, deducted 1/2 towards his personal expenses, applied the multiplier of 17 (deceased, a bachelor aged 28 years). The loss of dependency was assessed at Rs.9,18,000/-. Amount of Rs.1,00,000/- towards 'loss of love and affection' and Rs.22,000/- for funeral expenses, were also awarded. In all, compensation of Rs.10,40,000/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – Insurer has contended that the offending vehicle did not have the permit to ply in the accidental area; its driver was not having a valid driving licence for driving a passenger carrying vehicle i.e. three wheeler; future prospects should have been 40% and not 50% as awarded; and the amount under the conventional heads could not be more than 70,000/-.

I have heard Ld. Counsel for the appellant – insurer and gone through the records with her assistance.

I first deal with the contention regarding the accident having occurred in an area, which was beyond the area for which permit was granted to the offending vehicle. The route permit (Ex.R4) was issued for driving the offending vehicle within five kilometres of the Municipal Committee area. RW1 Rajinder Kaur, Assistant in the office of RTA, Fatehahad, who was examined by the appellant – insurer stated in her cross-examination that she cannot tell as to from which place Municipal Area of City Fatehabad starts and at which place it ends. She further stated that she does not know the place of accident and, thus, could not say whether it was within five kilometres of Municipal Limit or not. However, PW2 Prem during his cross-examination stated that the place of accident is situated in between Dhani Miyan Khan and Bighar. He further stated that Bighar is at a distance of 7-8 KM from Fatehabad and Dhani Miyan Khan is situated at a distance of about 2-3 KM from Bighar. In other words, according to him, the accident occurred about 9-10 KM from city Fatehabad.

Having considered the above evidence, it cannot be concluded that the place of accident was beyond five kilometres from the Municipal Committee area. The offending vehicle was permitted to go 5 kilometres beyond the Municipal Limit of Fatehabad. No evidence was led to prove that the area of accident was more than five kilometres away from the Municipal Limits of Fatehabad.

The Ld. Tribunal also relied on a decision of the Karnataka High Court in **Reliance General Insurance Company Limited vs. Devibai and another II, (2016) ACC 605 (Karnataka)** wherein it has been held that simply because the place of accident is outside of the limit as mentioned in the Insurance Policy that itself will not amount to violation of conditions of insurance policy. It was held that the Insurance Company would be liable to pay the compensation. Thus there is no merit in this contention of the Ld. Counsel for the appellant.

The second contention regarding the validity of the driving licence of respondent No.2 to driver the offending vehicle, a three-wheeler, a passenger carriage vehicle also cannot sustain in view of the decision of Hon'ble the Supreme Court in **Mukund Dewangan vs. Oriental Insurance Company Limited 2017 SCC OnLine SC 788**. It was observed:

62. *Transport vehicle has been defined in section 2(47) of* *the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean 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. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a 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.* ***It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act.*** *It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.*

However on the quantum of compensation needs to be re-assessed in view of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**.

Accordingly, the compensation is re-assessed as under:-

Sr.No.	**Heads**	**Calculation (In Rs.)**
(i)	Monthly Income	6000/-
(ii)	40% of above (i) to be added as future prospects (deceased aged 28 yrs.)	6000+(6000x40/100) = 8400/-

(iii)	Monthly dependency (½ of (ii) deducted as personal expenses of the deceased – a bachelor)	8400-(8400x1/2)= 4200/-
(iv)	Loss of dependency after multiplier of 17 is applied	4200x12x17= 8,56,800/-
(vi)	Loss of Estate	15,000/-
(vii)	Funeral Expenses	15,000/-
	Total	***8,86,800/-***

Hence, the appeal is allowed. The Award of the Tribunal is modified to the extent that the appellant is held entitled to compensation of Rs.8,86,800/-, that is, Rs.1,53,200/- (1040000-886800) less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimant-respondent No.1. In the event of the said respondent having any objection, she may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimant and is confined to the contentions raised herein. It is without prejudice to the rights of the claimant to separately agitate for enhancement on any ground that may be available to her.

May 04, 2018 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No