Paramjit Kaur Saini
2018.03.19 12:05
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In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:8.3.2018

<u>FAO No. 801 of 2018(O&M)</u>

United India Insurance Company Limited

---Appellant

vs.

Ranjit Kaur and others

---Respondents

<u>FAO No. 820 of 2018(O&M)</u>

United India Insurance Company Limited

---Appellant

vs.

Smt. Mamta Rani and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. D.P.Gupta, Advocate
for the appellant-insurance company

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<u>Rekha Mittal, J.</u>

This order will dispose of FAO Nos. 801 and 820 of 2018 as these have emerged out of the same accident that took place on 5.8.2015 in which Gurcharanjit Singh son of Darbara Singh and Sham Lal son of Kesho Ram sustained injuries that proved fatal.

FAO No. 801 of 2018 has been filed to assail award dated 10.10.2017 passed by the Motor Accidents Claims Tribunal, Patiala (in short "the Tribunal") whereby compensation has been awarded in regard to death of Gurcharanjit Singh in the application filed by Ranjit Kaur and others whereas FAO No. 820 of 2018 has been filed against award allowing compensation qua death of Sham Lal.

<u>FAO Nos. 801 and 820 of 2018</u>

Counsel for the appellant insurance company would argue that as the accident took place due to hitting of trolly attached with tractor No. HR-23F/8137 (old No. PB-54B/5166) with car bearing No. PB-11-BD/0090 driven by Gurcharanjit Singh, the insurance company is not liable to pay compensation as trolly was not insured with the appellant-insurance company. In support of his contention, he has relied upon judgments of this Court **The New India Assurance Company Limited vs. Sohan Lal and others 2013 (1) PLR Vol. 169** and **New India Assurance Company Limited vs. Meeta Devi and others** FAO No. 3768 of 2014 decided on 31.3.2015.

With regard to quantum of compensation assessed qua death of Gurcharanjit Singh, it is argued that the Tribunal has awarded an amount of Rs. 2.3 Lakhs under conventional heads and the same is liable to be restricted to Rs. 70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**.

A similar contention was raised with regard to compensation under conventional heads allowed qua death of Sham Lal in the claim preferred by Mamta Rani and others.

Prabhjot Singh son of late Gurcharanjit Singh was examined to discharge onus of issue No. 1 “whether respondent No. 1 caused the death of Gurcharanjit Singh while driving tractor trolley bearing No. HR-

23F/8137 (old No. PB-54B/5166) in a rash and negligent manner?". He tendered into evidence his affidavit Ex. CW2/B. A relevant extract from para 4, reads as follows:-

> "That the above said accident was caused due to the rash and negligent driving of the respondent No. 1 who was driving the tractor/trolley on very high speed and without observing the traffic rules. The respondent No. 1 is the author of the said accident."

Counsel for the appellant has not made any submissions to challenge findings of the Tribunal that accident took place due to rash and negligent driving of tractor attached with trolley by its driver Rajinder Singh who suddenly turned tractor trolley without giving any signal and brought the same in middle of the road as a result of which the car driven by Gurcharanjit Singh struck against trolly of the tractor loaded with *turi* (wheat husk) and rear door of the car got opened suddenly and occupants of the car got entangled inside the car.

The question for consideration is that merely because the car struck against the trolly and not with the tractor, can the insurance company escape its liability to pay compensation on the premise that the trolly was not insured but only the tractor was insured. The answer, obviously, appears to be in the negative. As soon as rashness and negligence is proved on the part of driver driving the vehicle insured with the insurer, insurance company cannot be heard to say that as the victim sustained injuries because of striking with a trolley/trailer attached with the motor vehicle, insurance company is not liable.

In **Sohan Lal and others' case (supra)**, PW5 has stated that after the accident, the jeep was pushed towards the left side of the road and had fallen in a ditch and the left side front portion of the trolley had hit the jeep. It was argued by counsel for the insurance company that if the left side front portion of the trolley had been the point of impact coming from the opposite direction, then it meant that the jeep driver had driven himself much to the right side of the road to cause the collision with the left front side of the trolley. This court in para 2 of the judgment had concluded that it was a matter of evidence that the speed of the tractor was less than the speed of the jeep. The court cannot find the driver of the tractor alone to be responsible but would hold by the point of impact on the trolley as not on any front portion of the tractor that there had been error in judgment of the driver of the jeep also. For that reason, the Court apportioned the liability equally between driver of the jeep and of the tractor. In the concluding lines of para 6, it has been held that if no part of the tractor was involved in the accident, but the trailer was involved in an accident, such as and when a trailer capsizes and causes an accident to a workman who is carried in the trailer or when the trailer unhinges itself from the tow by accident and causes injury to a person or damage to any vehicle, the question of liability of an insurer would arise only if the trailer was also insured, for that would mean the risk caused by the trailer which was insured makes possible a right of indemnity to the owner of the tractor who had also availed of an insurance cover for the trailer attached to the tractor. Counsel for the appellant has failed to draw any similarity much less semblance of similarity between the facts of the case in hand and that of the referred authority in order to take advantage of the observations made in para 6, taken note of hereinbefore. Similarly, the judgment in **Meeta Devi and others' case (supra)** was also rendered in view of peculiar facts and circumstances of the case. That being so, the insurance company cannot seek aid from the referred judgments in order to escape its liability to pay compensation.

This brings the court to compensation assessed by the Tribunal with regard to death of Gurcharanjit Singh. The Tribunal has awarded a sum of Rs. 10,71,500/- out of which an amount of Rs. 2,30,000/- has been allowed under conventional heads, detailed hereunder:-

Income per annum (Rs. 8500 x 12)	Rs. 1,02,000/-
Deduction for personal and living expenses (1/4th of 1,02,000-25,500/-)	Rs. 1,02,000 minus 25,500 -76,500 would be multiplicand
Loss of Dependency i.e. Multiplicand x multiplier (76,500 x 11)	Rs. 8.41,500/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection and care and guidance to children and mother	Rs. 1,00,000/-
Loss of estate	Rs. 5000/-
Funeral expenses	Rs. 25,000/-

Perusal of computation represented in a tabulated form in para 16 of the award makes it evident that the Tribunal has not allowed benefit of increase in income for future prospects. The deceased was 52 years old at the time of accident and in the light of latest judgment of Hon'ble the Supreme Court in **Pranay Sethi and others' case (supra),** claimants shall be entitled to increase in income for future prospects @ 10%. Under the circumstances, loss of dependency comes to Rs.8,41,500 + 84,150(10%) =**Rs. 9,25,650/-.**

Compensation awarded under conventional heads is modified to the effect that the 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/-**

The total compensation is **Rs.9,95,650/-** and compensation awarded by the Tribunal is reduced to the extent of **Rs. 75,850/-.**

In regard to death of Sham Lal son of Kesho Ram, Mamta Rani and others have been awarded compensation of Rs. 13,01,000/-, detailed hereunder:-

Income per annum (Rs. 8500 x 12)	Rs. 1,02,000/-
Deduction for personal and living expenses (1/4th of 1,02,000-25,500/-)	Rs. 1,02,000 minus 25,500 -76,500 would be multiplicand
Loss of Dependency i.e. Multiplicand x multiplier (76,500 x 14)	Rs. 10,71,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection and care and guidance to children and mother	Rs. 1,00,000/-
Loss of estate	Rs. 5000/-
Funeral expenses	Rs. 25,000/-

The deceased was in the age bracket of 41-45 years. The claimants shall be entitled to increase in income for future prospects @ 25% and accordingly, loss of dependency comes to Rs. 10,71,000+ 2,67,750(25%)=**Rs.13,38,750/-.**

Compensation awarded under conventional heads is modified to the effect that the 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/-**

The total compensation is **Rs.14,08,750/-** and the additional amount is **Rs.1,07,750/-**(14,08,750 – 13,01,000), payable with interest @ 7.5% per annum from the date of petition till realization to children of the deceased in equal proportion, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. The interest accruing on the FDRs shall be paid to their mother for meeting expenses on their education and living.

The appeals stand disposed of in the aforesaid terms.

Before parting with this order, it is pertinent to mention that as compensation awarded by the Tribunal has been reduced (FAO No. 801 of 2018), the claimants would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to the claimants if they file an appeal for enhancement. Copy of the order be sent to claimants in each case.

(Rekha Mittal)
Judge

8.3.2018
paramjit

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