IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.37 of 2019 (O&M)
Date of Decision:26.03.2019

Future Generali India Insurance Company Ltd........Appellants

Vs.

Suman and Others ....Respondents

FAO No.41 of 2019 (O&M)

Future Generali India Insurance Company Ltd........Appellants

Vs.

Reena and Others ....Respondents

FAO No.42 of 2019 (O&M)

Future Generali India Insurance Company Ltd........Appellants

Vs.

Reena and Others ....Respondents

FAO No.47 of 2019 (O&M)

Future Generali India Insurance Company Ltd........Appellants

Vs.

Sushma Rani and Others ....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Rajesh K.Sharma, Advocate, for the appellant/Insurance Company.

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DR. RAVI RANJAN, J. (Oral Judgment)

CM No.211-CII of 2019 in FAO No.37 of 2019
CM No.245-CII of 2019 in FAO No.41 of 2019
CM No.248-CII of 2019 in FAO No.42 of 2019
CM No.264-CII of 2019 in FAO No.47 of 2019

These applications have been filed for condoning the delay of about 39 days that has occurred in filing the three appeals i.e. FAO No.37 of 2019, FAO No.42 of 2019, FAO No.47 of 2019 and 37 days in FAO No.41 of 2019.

In view of the averments made in the aforesaid applications, this Court is of the view that the appellant was prevented from sufficient cause in preferring these appeals within time.

In the result, all the aforesaid applications are allowed and delay in filing the respective appeals is hereby condoned.

Main Cases

This judgment will dispose of FAO No.37 of 2019, FAO No.41 of 2019, FAO No.42 of 2019 and FAO No.47 of 2019.

All the above appeals arise out of same Judgment and Award dated 16.07.2018 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari. As such, all the appeals have been heard analogous and are being disposed of by a common judgment. In FAO No.41 and 47 of 2019, the claim applications were filed in view of the death of Rajnish and Priyanka in a motor vehicular accident whereas in other two appeals, the claim applications were with respect to the injured who have sustained injuries in the same motor vehicular accident meaning thereby that two of the appellants died and two were injured in the same accident.

Brief facts of the case are that the deceased Rajnish along with his family members, i.e., sister Priyanka (since deceased), his wife Reena (injured), his children as well as one Suman wife of Uday Singh (another injured) were travelling in the vehicle being driven by the deceased Rajnish which was moving at moderate speed as they were on way to Mata Shakumbhri Devi Temple. When they reached near Gandewar crossing on Raipur-Gandewar road, a tractor trolley bearing No.HR-02-AF-1304, being driven by respondent No.1 in a rash and negligent manner at high speed came from the aforesaid directions on the wrong said of road and hit their car inflicting multiple and grievous injuries on the passengers out of whom, Rajnish and Priyanka who died on the spot. Both the injured, i.e. Reena and Suman underwent medical treatment and survived. FIR No.373 dated 23.10.2015 was registered under Section 279, 337, 338, 427 and 304-A IPC at Police Station Behat (Saharanpur) against unknown person and unknown driver.

The appellants were claimants in MACT case No.MACP-211 of 2016 out of which FAO No. 47 of 2019 arises . It has been averred in the claim application that their daughter namely Priyanka (since deceased), aged about 25 years at the time of her death, was carrying her studies for Bachelor in Arts and used to give tuition to various students and was earning Rs.10 thousand per month. Due to her sudden demise, claimants-appellants have suffered huge set back as she was contributing and helping to meet out the family expenses also. The applicants claimed compensation of Rs.20 lacs on account of the death in the motor vehicular accident. Similarly, in another death case in MACT case No.MACT 206 of 2016, with respect to the deceased Rajnish, the claim-petitioners are Reena-widow, two children Aarushi and Aarush and parents. They claimed that the deceased was about

30 years of age at the time of his death and used to do agriculture work besides carrying on his private business and was earning about Rs.40,000/- per month and thus, they claim Rs.60 Lacs as compensation.

The claim-applicant Reena in MACT case No.MACT-207-2016 out of which FAO No.42 of 2019 arises, has pleaded that she sustained multiple and grievous injury in the accident including head, face, forehead and lip etc. She was admitted in Goel Hospital, Jagadhari and, thereafter, she underwent medical treatment in Jindal Hospital and survived. She claimed that she was about 28 years of age at the time of accident and she was house wife and rendering services worth Rs.40,000/- per annum. It has further been claimed that an amount of Rs.1 lac was spent on her medical treatment, however, she has not been absolutely cured even on the date of filing of the claim application. The accident had made her permanently disabled and as such, she claimed compensation to the tune of Rs.20 Lacs was sought.

Similarly, Suman (injured) filed MACT Case No.209 of 2016. She claimed that she had also sustained multiple and grievous injuries in the accident including on mouth, fracture of mandible and fracture of right hip. She was also admitted in Goel Hospital, Jagadhari and then underwent medical treatment in Mahajan Hospital, Jagadhari, as indoor patient. She has claimed that she was about 38 years of at the time of accident. Being a housewife, she was discharging her obligations as housewife and rendering services worth Rs.40,000/- per annum. She also claimed that an amount of Rs.2 Lacs was spent on her medical treatment but she is yet to be cured finally. She further pleaded that the injuries sustained by her made her permanently disabled and thus, claimed a compensation to the tune of Rs.25 Lacs.

In all the cases, claimants have pleaded that accident took place due to rash and negligent driving of concerned tractor and trolley which was being driven by respondent No.1 and hence, respondent No.1 being driver and respondent No.2 being owner and respondent No.3 being insurer of the tractor trolley are liable to pay compensation.

Respondents No.1 and 2, being driver and owner in the claim applications, filed their written statements in the respective claim petitions controverting the averments made therein. The stand of the claimants regarding the involvement of the offending vehicle in the accident having been taken place due to rash and negligent driving of the same by respondent No.1 (driver), was also denied. According to the aforesaid respondents, FIR was lodged falsely implicating them. The Insurance Company, being respondent No.3 in the claim petitions, also filed written statement in all the four claim applications controverting the averments made therein and also questioning the involvement of concerned vehicle in accident. It has also been alleged that a false FIR was registered by the side of the claimants in connivance with respondents No.1 and 2. A stand has been taken that the accident was outcome of rash and negligent driving of deceased Rajnish himself who was driving his car. Another stand was taken that the respondent No.1 (driver) was not holding any valid or effective driving licence and the offending vehicle was also being driven against the provisions of the Motor Vehicles Act and terms and in violations of conditions of the insurance policy. The Tribunal, on consideration of the rival pleadings, framed following issues:-

1. Whether the accident result into the death of Priyanka and Rajnish as well as injuries to petitioners Suman and Reena, took place on 23.10.2005 on account of rash and

negligent driving of respondent No.1 Julfan Ahmand while driving tractor trolley No.HR-02-AF-1304? OPP.

2. If issue No.1 is proved, to what amount of compensation of all the respective claim petitioners are entitled to and from the whom? OPP.

3. Whether the respondent No.2 has violated the terms and conditions of insurance policy as respondent No.1 was not holding a valid and effective driving licence. If so, to what effect? OPR.

4. Relief.

The claimant/appellants produced 7 witness in order to substantiate their claim. PW-1 is the injured claimant Reena herself whereas claimant Kripal Pal who is father of the deceased Rajnish and Priyanka as well as father-in-law of claimant Reena, has been examined as PW-2. Injured claimant Suman has examined herself as PW-3, Dr.Mahavir Goel from Goel Hospital, Jagadhari has appeared as PW-4, Rakesh Kumar, Salesman, Sat Parkash and Sons inside Goel Hospital, Jagadhari has appeared as PW-5, Sanjeev Kumar, Pharmacist, Jindal Medicos, inside Jindal Hospital, Jagadhari has appeared as PW-6, Dr.Yogesh Jindal, Jindal Hospital, Jagadhari has appeared as PW7.

Several documents have been brought on record, such as FIR, certificate of Priyanka, Income tax returned of Rajnish, receipt of acknowledgement and income tax return of Assessment Year 2015/2016 etc. as Ex.P-1 to Ex.P-6. The case summary prepared by Dr.Mahavir Goel, has been brought on record as Ex.P-7 and the bill of Rs.20,550/- has been brought on record as Ex.P-8. Similarly, Ex.P-9 is regarding X-ray examination of injured Reena wife of Rajnish, for which she was charged Rs.1200/-. The bills of medicines have been brought on record as Ex.P10 and Ex.P11 with respect to Reena and Ex.P12 to Ex.P24 in respect of

Suman. Sanjeev Kumar, Pharmacist, has testified the bills Ex.P25 to Ex.P29 in respect of patient Reena. Several other documents have also been brought on record.

So far as respondents are concerned, no oral evidence was led The stand taken by respondent No.1 that he was not involved in the accident and it was not his rash and negligent driving causing the accident has not been proved by him by presenting him for examination as a witness before the Tribunal. Only driving licence and insurance cover note have been brought on record by the respondent No.1 and 2. Whereas, the appellant/respondent No.3 i.e. Insurance Company has tendered the copy of the insurance policy as Ex.P-4. The Tribunal, after consideration of the issues involved, came to the conclusion that it stands established from the record that the accident has resulted in multiple and grievous injuries upon claimant Reena and Suman and further that the death of Rajnish and Prianka also took place due to rash and negligent driving of the tractor-trolley bearing registration no. HR-02-AF-1304 driven by respondent No.1. So far issues No.2 and 3 are concerned, the Tribunal, in case of Priyanka has allowed total compensation amount of Rs.11,10,000/- whereas in the case of death of Rajnish, an amount of Rs.43,20,000/- has been awarded. In the injuries cases, however, amount of Rs.75,000/- was granted to the claimant-appellant Reena against the total expenses, similarly, in the case of injured Suman also, under the aforesaid head, a total sum of Rs.75,000/- has been allowed as amount of compensation.

In the aforesaid background of facutal matrix, I have heard learned counsel for the appellant-insurance company.

Learned counsel for the appellant has raised only two issues, i.e., regarding the finding recorded by the Tribunal with respect to rash and negligent driving by the driver of the offending vehicle and regarding false involvement of the alleged offending vehicle in the case. However, in FAO No.47 of 2019, he has raised an issue that no deduction as against personal expenses has been made with respect to Priyanka.

It is urged that the FIR was lodged against unknown vehicle and unknown driver as the first informant could not disclose the registration number or the name of the driver. However, lateron, the things appear to have been changed in collusion with the claimant and owner and driver of the concerned vehicle. Accordingly, the registration number and name came up before the police subsequently.

The issue has been considered by the Tribunal which has come to the conclusion that the police, after completion of investigation, has submitted its final report under Section 173 Cr.P.C. which is available on record as Ex.P44. It reflects that, after thorough investigation, the police has found involvement of the tractor-trolley, as offending vehicle and the respondent No.1, being driver, was also found responsible for rash and negligent driving.

Learned counsel for the appellant has submitted that the subsequent statement made before the police and even before the Tribunal was an after thought which clearly indicates towards the collusion between claimant and respondents No.1 and 2, i.e., the driver and owner only with the purpose to extract compensation amount from the insurance company.

However, in my opinion, it would be very difficult to hold, in the absence of any positive evidence regarding fraud and fraudulent involvement of the claimant as well as the driver and the owner of the vehicle, that the driver and owner would implicate themselves in a police case so that the claimants derives some benefit from the insurance company. That apart, in many cases, FIR is lodged against unknown person but after investigation police submits charge-sheet/police report showing involvement of accused persons in the alleged occurrence. Thus, in such a situation, to hold and declare that the aforesaid act is result of any collusion or fraud, some positive evidence would be required. There should be specific pleading of fraud and it should be proved also like a criminal case. However, the respondent No.1 has led no evidence in this regard at all and it appears that this issue is being raised by the respondent No.3 without any proper pleading and supporting it by leading evidence either documentary or oral. Apart from the above, the best person who could have stated regarding the occurrence and involvement of offending vehicle would be the injured. Since the death of two victims was on the spot itself, no version of dead persons could be recorded but the injured persons have come up before the Tribunal and have categorically stated regarding the involvement of the offending vehicle and the driver. There is no rebuttal of the same either by the driver and owner by leading evidence or even by the Insurance Company. In such a situation, in my considered opinion, there was no option left with the Tribunal to hold and declare, in view of the materials available on record, including the testimony of the injured persons i.e. Reena and Suman and the police report filed by the police under Section 173 Cr.P.C., that the concerned vehicle was offending vehicle which was being driven by the driver who was impleaded as respondent No.1 in the claim petitions.

Next issue relates to deduction of personal expenses from the notional income fixed by the Tribunal in the case of the deceased Priyanka who was unmarried and student of B-Ed.. However, after raising the issue in the beginning, learned counsel for the appellant/Insurance Company did not pressed it at the time of final hearing. Thus, this issue is not being dealt with. No other issue has been raised by learned counsel for the appellant at the time of hearing of this appeal save and except the issues that have already been delved upon hereinabove.

In the result, all the appeals, being devoid of any merit, are hereby dismissed.

(DR. RAVI RANJAN)
JUDGE

26.03.2019
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No