IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-835-2000(O&M)

Neelam Bhandari and others

...Appellants

Versus

Tejinder Singh and others

...Respondents

(2) FAO-988-2000(O&M)

The Oriental Insurance Company Ltd.

...Appellant

Versus

Neelam Bhandari and others

...Respondents

Date of Decision:-20.9.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Pankaj Kundra, Advocate
for the appellants in FAO-835-2000 and
for respondents No.1, 3 to 5 in FAO-988-2000.

Mr.Vinod Chaudhary, Advocate
for the appellant in FAO-988-2000 and
for respondent No.3 in FAO-835-2000.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-835-2000 filed on behalf of appellants - Smt.Neelam Bhandari and others and FAO-988-2000 filed on behalf of appellant – Oriental Insurance Company Ltd., which have arisen out of the same accident.

Briefly stated facts of the case, as per the version of the claimants are that on 7.10.1994 at about 6:45 p.m., deceased Satish Bhandari along with Gursharan Singh was going from village Goraya towards Phagwara on a scooter; when the scooter had reached near turning of Railway Station, Goraya on G.T. Road, then a truck bearing registration No.PB-08-H-9981 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Tajinder Singh in a rash and negligent manner was going ahead of the scooter and when the scooter of the deceased had just reached near the offending vehicle, then its driver abruptly turned it towards the right hand side without giving any signal or indication and struck the scooter, resultantly Satish Bhandari fell down and received injuries, to which he succumbed.

The legal representatives of deceased, namely, his wife - Smt.Neelam Bhandari, mother – Smt.Promila Bhandari, minor son – Master Varun Bhandari, minor daughter – Baby Preetika Bhandari and another minor son – Karun Bhandari had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Tajinder Singh – driver, Gurdeep Singh – owner and Oriental Insurance company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.10 lacs along with interest.

According to the claimants, Satish Bhandari deceased was aged about 37 years and was employed with a Wine Contractor and he was earning Rs.3,000/- per month and the claimants were dependent upon his earnings.

On being put to notice, respondent No.1 did not appear and was proceeded against ex-parte, whereas respondents No.2 and 3 put in appearance and filed written statements contesting the claim petition.

In the written statement filed by respondent No.2, he had taken up a stand that he had not employed Tajinder Singh as a driver on the truck, rather the person employed as a driver on the truck was Joginder Singh son of Durga Singh. According to the answering respondent, he had not given the truck to Tajinder Singh for driving and that the truck was not involved in any accident, however the truck was insured with Oriental Insurance Company Ltd. - respondent No.3.

In the written statement filed by respondent No.3 – insurance company, it also refuted the assertions in the claim petition taking various legal objections and statutory defences further contending that the terms and conditions of the insurance policy were violated inasmuch as the truck driver was not having a valid driving licence.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

However, vide Award dated 6.1.2000, the Motor Accidents Claims Tribunal, Jalandhar (hereinafter referred to as the Tribunal) allowed the claim petition and granted compensation of Rs.2,20,000/- along with interest @ 12% per annum from the date of filing of the petition till actual realization to the claimants payable by all the respondents jointly and severally. Out of the compensation amount, Rs.20,000/- was ordered to be paid to Smt.Promila Bhandari – mother, whereas Rs.50,000/- each to widow and children of the deceased.

The appellants/petitioners/claimants being of the view that the compensation awarded was on lower side, have approached this Court by way of filing an appeal seeking enhancement of compensation.

On the other hand, respondent No.3 – insurance company feeling that the amount of compensation awarded is on the higher side and award is otherwise bad has also filed an appeal.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on appreciation of the evidence adduced by the parties has come to the conclusion that Satish Bhandari had died as a result of accident caused by rash and negligent driving of the offending vehicle by respondent No.1 – Tajinder Singh. The finding does not call for any interference since while coming to the conclusion, the Tribunal has considered the ocular evidence provided by Gursharan Singh, who had supported the case of the claimants on material aspects. Furthermore, FIR regarding the accident had been registered against Tajinder Singh for the offences under Sections 279, 338 and 327 IPC and when Satish

Bhandari had died on 11.10.1994 offence under Section 304-A IPC was added. Tajinder Singh had been challaned. Tajinder Singh had not appeared before the Tribunal to contest the claim petition. He had not got his statement recorded in the proceedings under Section 166 of the Motor Vehicles Act so as to state that he was not driving the offending vehicle at the relevant time or that he was not responsible for the accident by his rash and negligent driving of the offending vehicle or for that matter, it was a case of contributory negligence. Interestingly enough, the Tribunal has decided issue No.1 in favour of the claimants holding that Satish Bhandari had died as a result of accident caused by rash and negligent driving of the offending vehicle by Tajinder Singh but all of a sudden when it came to determining the compensation payable to the claimants observed that some contributory negligence may also be involved since the truck was going ahead and Satish Bhandari may be overtaking that truck when truck suddenly took turn and the accident took place, as such 25% of the amount was deducted towards contributory negligence. The whole approach of the Tribunal was erroneous and wrong. It is nobody case that the deceased had died while overtaking the truck. As mentioned earlier, Tajinder Singh driver of the truck had not appeared before the Tribunal to contest the claim petition. He was the best person to inform regarding the manner of the accident but he kept away from the proceedings. Respondents No.2 and 3 had rather denied the involvement of truck in the accident what to talk of taking a specific plea that it was a case of contributory negligence. The Tribunal itself was not sure that the deceased was also at fault in happening of the accident and rather on the ground of assumptions, presumptions and conjectures observed that some contributory negligence may also be involved since the truck was going ahead and Satish Bhandari may be overtaking that truck when truck suddenly took turn and accident took place. The contributory negligence can certainly be not inferred in such a manner, rather conclusions drawn by the Tribunal are contradictory inasmuch as on one hand observing that Tajinder Singh had caused the accident by his rash and negligent driving of the truck while deciding issue No.1 and while deciding issues No.2 and 3 observing in a half hearted manner that some contributory negligence may also be involved. Such observations cannot be sustained and are set aside since no contributory negligence on the part of Satish Bhandari deceased is found to be there and no deduction on that account can be made from the compensation amount awarded.

Next coming to the quantum of compensation amount determined by the Tribunal. The Tribunal had taken the age of deceased to be 37 years and accessed his income as Rs.2,000/- per month. The Tribunal had wrongly ignored the deposition of AW3 Rattan Lal, Partner of firm M/s Uppal & Sons, Philaur, who had stated that they had employed Satish Bhandari as a Supervisor and were giving him salary of Rs.3,000/- per month. His testimony has been discarded solely for the reason that he had admitted in his cross-examination that the firm had lasted only for one year. Even if it be so, that was indicative of the probable earning of the deceased. The Tribunal had no where observed as to what were the minimum wages payable to skilled/unskilled workers in State of Punjab at the relevant time. It has further not been observed as to how much money a manual labourer used to make per day at relevant time. Therefore, in my considered view, the Tribunal clearly fell in error in refusing to accept Rs.3,000/- per month as income of the deceased. Therefore, income of the deceased is taken as Rs.3,000/- per month.

The Tribunal has not added any amount towards future prospects. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** by the Apex Court in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.3,000 + 1200 = Rs.4,200/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** by Hon'ble Supreme Court where the number of dependent family members are 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.3,150/- per month, annual dependency comes out to Rs.3,150 x 12 = Rs.37,800/-.

The Tribunal has used multiplier of 16. However, in terms of ***Smt.Sarla Verma's*** (supra) case when the deceased was in the age group of 36 to 40 years, multiplier of 15 is to be used. Doing that the compensation payable comes out to Rs.37,800 x 15 = 5,67,000/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs.5,67,000 + 70,000 = 6,37,000/-.

The Tribunal has awarded compensation of Rs.2,20,000/-.

In this way, the enhanced amount comes out to be Rs.4,17,000/- (6,37,000 - 2,20,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,17,000/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the FAO-835-2000 filed on behalf of the claimants is allowed partly with costs.

Learned counsel for the insurance company has argued that since at the relevant time Tajinder Singh was driving the truck, who was not holding a legal and valid driving licence, therefore the terms and conditions of the insurance policy were contravened and insurance company should have been absolved of its liability to pay compensation, but the Tribunal ignored that fact and saddled the insurance company with the liability and such liability of insurance company be now set aside by way of acceptance of the appeal.

Learned counsel appearing for the claimants has vehemently opposed this contention contending that the Tribunal has discussed that aspect in detail citing the case law on the point finding that the insurance company was liable.

After hearing learned counsel for the parties, I do not find much merit in such contention of the learned counsel for the insurance company. The Tribunal has rightly observed that respondent No.2 –

owner of the truck had given his truck to a driver having valid licence and if for some reason the truck was being driven by another person say cleaner and he causes the accident by his fault, then the owner cannot be blamed for any lapse and insurance company cannot wash its hands of the matter pleading that it was not liable to pay any compensation. The Tribunal has referred to judgments by the Apex Court i.e. ***Shandia Insurance Co. Ltd. Versus Kokilaben Chandravadan and others 1987 ACJ 411*** and ***Sohan Lal Passi Versus P Sesh Reddy and others, 1996 ACJ 1044***. Therefore, I do not see any reason to arrive at a different conclusion from the one drawn by the Tribunal. The respondent No.2-owner of the truck had examined Joginder Singh as RW2, who had categorically stated that he was driver of the truck at the relevant time and Tajinder Singh was cleaner. In that way, respondent No.2 owner of the truck cannot be faulted for handing over the truck to a person not holding a legal and valid driving licence to drive the truck and insurance company cannot escape its liability for the said reason.

As regards the authority ***United India Insurance Company Ltd. Versus Gian Chand and others, 1997 ACJ 1065*** referred to by counsel for the insurance company wherein it was observed that when the insured gives vehicle for driving to an unlicensed driver, the insurance company would got exonerated from its liability to meet the claims of third party, who might have suffered on account of vehicular accident caused by such unlicensed driver, this authority does not come to rescue of the appellant/insurance company simply for the reason that as discussed in detail above, respondent No.2 – owner of the truck had employed Joginder Singh as a driver and not Tajinder Singh, who had caused the accident.

Therefore, FAO-988-2000 filed on behalf of the insurance company stands dismissed.

20.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No