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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 9.4.2019

FAO-771-2002
Usha and others ...... Appellants

Versus

Madan Lal and others .... Respondents

FAO-2129-2005
Smt. Indra Bedi ...... Appellant

Versus

Dharam Pal and others .... Respondents

FAO-2130-2005
Smt. Indra Bedi ...... Appellant

Versus

Usha and others .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jagdish Manchanda, Advocate,
for appellants in FAO-771-2002
and for respondents No. 1 to 3 in FAO-2130-2005.

Mr. Saurabh Kapoor, Advocate, for,
Mr. Ashit Malik, Advocate,
for appellant in FAO-2129-2005, FAO-2130-2005.

Mr. Govind Chauhan, Advocate,
for respondent No. 1 in FAO-2129-2005.

Mr. Ravinder Arora and Mr. Vipul Sharma, Advocates,
for insurance company.

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KULDIP SINGH J. (ORAL)

By this common order, I shall dispose of abovenoted three connected appeals arising out of same award dated 11.10.2000, passed by Motor Accident Claims Tribunal, Karnal (in short 'the Tribunal'). FAO-771-2002 has been filed by claimants for enhancement of compensation and two other appeals have been filed by owner of offending vehicle against the findings, vide which she was held liable alongwith driver to pay compensation to the exclusion of insurance company.

Facts of case are that on 12.8.1998, at about 9.00 PM, Vijay Pal was travelling in a three wheeler. When three wheeler was taking a turn towards village Uchana, a bus bearing registration No. HP-01-1695, owned by respondent No. 1 came with rash and negligent manner from side of Karnal. It was being driven by respondent No. 2 driver and hit three wheeler, as a result of which Vijay Pal, driver of three wheeler died at spot, whereas Dharam Pal, driver of offending vehicle sustained multiple injuries. FIR No. 569 dated 12.8.1998 under Sections 279, 337, 304-A IPC was registered against driver of offending bus.

Respondents No. 1 and 2 in written statement had denied accident. Rash and negligent driving was also denied.

The insurance company in reply took plea that there is collusion between respondents No. 1 and 2. They have not informed insurance company. The insurance company claimed that there is violation of terms and conditions of insurance company.

It is added here that there were two claim applications, one filed by Usha, for grant of compensation and another filed by Dharam Pal (driver of offending bus) for compensation for injuries received by him. These were decided by common award. The Tribunal held that driving licence of respondent No. 1 driver was fake. Therefore, respondents No. 1 and 2 were jointly and severally held liable to pay compensation to claimants. The Tribunal awarded compensation to the tune of Rs. 2,40,200/- on account of death of Vijay Pal, whereas Rs. 10,000/- as compensation was awarded to Dharam Pal alongwith interest at the rate of 12% per annum from the date of filing of claim petition till final payment. It was further ordered that Usha shall be entitled to 50% of compensation, whereas remaining 50% shall be shared by claimants No. 2 and 3.

I have heard learned counsel for parties and have also carefully gone through files.

First of all taking up appeal filed by Usha regarding inadequacy of compensation, it comes out that income of deceased was taken to be that of labourer at Rs. 2100- per month. Since Vijay Pal was self employed, future prospects were not added. Accordingly, 40% as future prospects are added. Income of deceased comes to Rs. 2,940/- p.m. 1/3rd is deducted as personal expenses, dependency of claimants comes to Rs. 2,050/-. Since deceased was 22 years of age, multiplier of 18 is applied. The amount of compensation comes to Rs. 4,42,800/-. Rs. 70,000/- on account of conventional heads are also allowed. The total amount of compensation comes to Rs. 5,12,800/-.

The matter regarding grant of consortium was considered by Constitution Bench of Hon'ble Supreme Court of India in National Insurance Co. Ltd. Versus Swaran Singh and others, 2004 (2) RCR (Civil) 114. The matter regarding allowing consortium was considered by Two Judge Bench of Hon'ble Supreme Court of India in Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others, 2018 (4) RCR (Civil) 333, wherein while considering the judgment in National Insurance Co. Ltd. Versus Pranay Sethi, (2017) 16 SCC 680, the Bench observed as under :-

> '8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which

compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, “consortium” is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse (Rajesh and Ors v. Rajbir Singh and Ors. (2013) 9 SCC 54).

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of the other in every conjugal relation.” (Black's Law Dictionary (5th Ed. 1979).

Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child cause great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to loss their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who loss their parents in motor vehicle accidents under the Act.'

In view of judgment of Hon'ble Supreme Court of India in Magma Greneral Insurance Co. Ltd. (supra), parents of deceased, namely, Shamo and Satpal, claimants No. 2 and 3, are entitled to consortium at the rate of Rs. 40,000/- each. The total amount of compensation comes to Rs. 5,92,800/-. Same is payable to claimants alongwith 7% interest per annum from the date of filing of claim petition till payment.

Now, taking up appeals filed by Indra Bedi, it comes out that when evidence was led, , respondents No. 1 and 2 did not appear in witness box. They merely produced driving licence (Ex.R1). The driver did not appear to claim that he was having a valid driving licence, nor owner appeared that she was satisfied about genuineness of driving licence of driver.

On the other hand, the Court got a verification from Licencing Authority, Rajasthan (Ex.R3) which shows that said licence was not issued in favour of Madan Lal (respondent), nor it was renewed.

The learned counsel for appellants has argued that it was for the insurance company to prove verification, but same was not proved by insurance company. The learned counsel for owner of offending vehicle has produced authorities of this Court in Surjan Ram Versus Anchal Singh, 1997 (3) RCR (Civil) 670, National Insurance Company Ltd.

Versus Smt. Asha Rani and others, 2008 (1) RCR (Civil) 5, Bajaj Allianz General Insurance Company Limited Versus Mahesh Kumar and others, 2010 (2) RCR (Civil) 785 in this regard.

The said authorities are distinguishable from present case as in this case, insurance company had not filed verification report, but it was called for by Court and taken as proof. There is nothing on file to show that said report is incorrect. As such, the Tribunal rightly held that respondents No. 1 and 2 i.e. owner and driver of offending vehicle are liable to pay compensation.

In view of Constitution Bench authority of Hon'ble Supreme Court of India in National Insurance Co. Ltd. (supra), in case of breach of policy, insurance company is liable to pay compensation to claimant and third party. However, it can recover from insured.

In view of matter, appeals filed by Indra Bedi stand dismissed with modification to the extent that insurance company shall pay compensation to claimants, but it shall have right to recover same from respondents No. 1 and 2, owner and driver of offending vehicle.

Appeal of appellant Usha is allowed and compensation is enhanced to Rs. 5,92,800/-. 7% per annum interest on enhanced compensation shall also be payable from the date of claim petition till payment. Rs. 25,000/- each, deposited by appellant Indra Bedi, be paid to insurance company, who is to reimburse the claim.

(KULDIP SINGH)
JUDGE

9.4.2019
sjks

Whether speaking order	:	Yes	/	No
Whether reportable	:	Yes	/	No