IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-2317-2001(O&M)

Joginder Singh

...Appellant

Versus

Malkiat Singh (since deceased) through his LRs and others

...Respondents

(2) FAO-73-2002(O&M)

Malkiat Singh (since deceased) through his LRs and another

...Appellants

Versus

Joginder Singh and others

...Respondents

Date of Decision:-9.12.2019

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

Present: None for the appellant in FAO-2317-2001.

Mr.Ashok K. Sharma, Advocate
for the appellants in FAO-73-2002 and
for the respondents No.1 and 2 in FAO-2317-2001.

Mr.Vinod Chaudhri, Advocate
for the insurance company.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-2317-2001 filed on behalf of appellant/owner Joginder Singh and FAO-73-2002 filed on behalf of appellants/claimants Malkiat Singh(since dead) through his LRs and another, which have arisen out of the same accident.

Briefly stated, facts of the case as per version of the claimants are that petitioners/claimants – Sh.Malkiat Singh – father and Smt.Gurnam Kaur – mother of Balwinder Singh, aged about 21 years, who had perished in a motor vehicular accident, which took place on 27.8.1996 near Bridge Chowk, Miranpur, District Patiala had brought a claim petition under Section 166 of the Motor Vehicles Act against Joginder Singh – owner, Balwinder Singh alias Bagga – driver and United India Insurance Company, Karnal Road, Kaithal – insurer of the truck bearing registration No.HR-37-1924 (hereinafter referred to as the offending vehicle).

As per version of the claimants, on 26.8.1996 at about 10:30 p.m., deceased Balwinder Singh, who was employed as Punjab Home Guard posted at Police Station Kotwali, Patiala along with SPO Rulda Singh was returning to their respective villages; when they reached T-point Sanauri Adda in order to look out for a transport for going to their villages, they found one Parminder Singh standing there waiting for some vehicle for taking a lift; in the meanwhile, the offending vehicle came there, which turned towards Devigarh side; all of them signalled the offending vehicle to stop; they took lift in the offending vehicle, which was being driven by Balwinder Singh @ Bagga – respondent No.2; when the truck was in motion, they realized that the driver was driving it in a very rash and negligent manner; they asked him to drive the truck in a normal speed but to no effect; on reaching near the site of accident, the driver of the offending vehicle lost control over it, as a result the offending vehicle fell into the choe and turned towards its left side;

Balwinder Singh was got crushed under the truck and died at the spot; other injured SPO Rulda Singh was sent to Patiala for treatment. Parminder had reported the matter to the police by making statement and an FIR No.93 dated 27.8.1996 for the offences under Sections 279, 337 and 304-A IPC was registered at Police Station Julkan.

According to the claimants, the deceased was drawing monthly salary of Rs.1,500/- and they were fully dependent upon them. They claimed compensation of Rs.8 lakhs.

On being put to notice, all the three respondents appeared. Respondents No.1 and 2 had filed a joint written statement, whereas respondent No.3 came up with a separate statement.

In the joint written statement filed by respondents No.1 and 2, they admitted the factum of accident but contended that the deceased had jumped from the running truck and fell down, in the process, he sustained injuries and died. According to such respondents, the deceased had died due to his own fault and a wrong criminal case was registered against respondent No.2.

Respondent No.3 – insurance company in the written statement took various legal objections and statutory defences contending that the deceased had taken lift from the truck driver and he was travelling in the truck as a gratuitous passenger. Therefore, as per terms of the policy and statutory provisions of Motor Vehicles Act, the insurance company was not liable to pay any compensation. Furthermore, the truck driver was not having a valid driving licence at the time of alleged accident. Therefore, the insurance company was not liable to pay compensation.

All the three respondents prayed for dismissal of the claim petition.

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

After hearing arguments, learned Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) decided issue No.1 in favour of claimants against the defendants holding that Balwinder Singh deceased had died as a result of rash and negligent driving of the offending truck by respondent No.2 – driver, issue No.2 was adjudicated holding that the petitioners/claimants are legal representatives/dependents of the deceased being his parents, issue No.3 was decided holding that the claimants were entitled to get compensation of Rs.1,95,000/- as compensation payable by the respondents, issue No.4 was decided against the respondents, issue No.5 was decided in favour of the insurance company and against respondents No.1 and 2.

The claim petition was partly allowed by Tribunal vide award dated 9.4.2001 and compensation of Rs.1,95,000/- was awarded to the claimants on account of death of Balwinder Singh to be paid by respondents No.1 and 2 jointly and severally along with interest @ 10% per annum from the date of filing of the claim petition till realisation. The apportionment and mode of payment are detailed under the award itself.

The claimants and respondent No.1 - owner were dissatisfied with the said award dated 9.4.2001 and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel. It is pertinent to mention here that there was no representation on behalf of appellant-owner in FAO-2317-2001.

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

The Tribunal on analysis of the evidence adduced before it had come to the conclusion that Balwinder Singh had died as a result of rash and negligent driving of the offending truck by respondent No.2 – driver. This finding is proper and appropriate and does not call for any interference.

Now coming to the next question of quantifying the compensation. The Tribunal had taken age of Balwinder Singh – deceased to be 21 years, his marital status as bachelor and his avocation as Home-guard Volunteer. His monthly income was assessed to be Rs.1,500/-. However, no addition on account of future prospects was made. With passage of time, monthly income of the deceased was expected to increase. In view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased had a permanent job and was aged below 40 years, then 50% of the actual salary is to be added to income of deceased towards future prospects. Doing that the monthly income of the deceased is taken as Rs.1,500 + 750 = Rs.2,250/-.

Since the deceased was a bachelor, in terms of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** 50% of the amount is to deducted towards his personal expenses. Doing that the dependency of claimants comes out to Rs.1,125/- per month, annual dependency comes out to Rs.1,125 x 12 = Rs.13,500/-.

The Tribunal had used multiplier of 16, which was on lower side. In view of judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.***(supra) a multiplier of 18 should have been applied. Doing that the compensation payable comes out to Rs. 13,500 x 18 = 2,43,000/-.

The Tribunal has awarded a sum of Rs.3,000/- as funeral expenses. However, 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 and Rs.15,000/- as funeral expenses. The total compensation comes out to Rs. 2,43,000 + 30,000 = 2,73,000/-.

The Tribunal has wrongly awarded total compensation of Rs.1,95,000/-. The same is enhanced to Rs.2,73,000/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of compensation of Rs.2,73,000/-. The other terms and conditions regarding apportionment of awarded amount given in the relief clause shall remain the same.

With such modification, the ***FAO-73-2002*** is allowed partly with costs.

The Tribunal has absolved the insurance company of liability to pay compensation for the reason that driver of the offending vehicle was not holding a valid driving licence. However, the contention of the insurance company that since deceased was a gratuitous passenger travelling in a transport vehicle, the insurance company is not liable to pay any compensation was rejected.

The Tribunal was not fully justified in absolving the insurance company of liability. The insurance company should have been directed to discharge the liability of payment of compensation under the award to the claimants though recovery rights could have been granted to such insurance company to recover that amount from the insured/owner of the offending vehicle as well as driver of the truck. However, the Tribunal had absolved the insurance company for the reason that driver was not having a legal and valid driving licence at the time of accident resulting in violation of the terms and conditions of the insurance policy. Even if it is so taken as far as the third party is concerned, insurance company remains liable though it can recover the amount so paid by it from the owner and driver of the offending vehicle.

Thus, **FAO-2317-2001** filed by the owner is allowed party. All the respondents are held liable to make the payment of awarded amount jointly and severally. Respondent No.3 – insurance company is directed to discharge the liability of making payment of the awarded amount to the claimants at the first instance. However, recovery rights have been granted to such insurance company to recover that amount from the insured/owner and driver of the offending vehicle.

9.12.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No