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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1740 of 2010
Date of decision: 04.10.2019

Nand Ram and another ...Appellants

V/s.

Jitender Pal and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Aditya Yadav, Advocate for the appellants.

Mr. Amit Kundra, Advocate for respondent-insurance co.

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__RITU BAHRI, J. (Oral).__

The claimants have come up in appeal against the award of the Tribunal dated 01.05.2009 whereby they have been awarded compensation of Rs.2,21,000/- on account of death of their son Manoj Yadav, who died in a road accident which took place on 27.01.2005.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 27.01.2005, Manoj Yadav alongwith Karamvir, Jitender Pal and Dixit was travelling from Gurgaon towards Rewari in a Maruti Car bearing No. DL-3C-E/6217, Respondent No. 1-Jitender Pal was driving the Maruti Car in a rash and negligent manner. When the Car reached near the petrol pump on National Highway No.8 in Dharuhera, then an ox came on the road all of a sudden. The respondent No.1 lost the control over the Maruti Car and the Car turned turtle. Due to the impact of the accident, all the occupants of the Car suffered multiple grievous injuries. Manoj Yadav and Dixit succumbed to the injuries at the site. The accident took place on account of rash and negligent driving of respondent No.1. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The parties are not in dispute with respect to finding on issue No.1 that the accident took place on account of negligent driving by the driver of the offending vehicle. This finding has been rightly given in favour of the claimants keeping in view an FIR No. 23 dated 28.01.2005 under Sections 279/337/304-A/429 IPC was registered at Police Station Dharuhera (Ex.PW1/A) against respondent No. 1, copy of order dated 19.11.2004 Ex.PW3/C and copy of affidavit report under Section 173 Cr.P.C. Vide judgment dated 06.08.2008 passed by the learned ACJM, Rewari, respondent No.1-Jitender Pal was acquitted of the charges. However ,the Tribunal proceeded with above said evidence and keeping in view the deposition of PW1 Jai Singh, Constable who had proved the copy of FIR Ex.PW1/A and PW2 Krishan Kumar Ahlmad who had proved the copy of charge-sheet dated 29.10.2005 Ex.PW2/A, gave a finding that accident took place because of rash and negligent driving of respondent No.1 and acquittal of the driver could not only be a ground to dismiss the claim petition.

The deceased was 24 years of age and was unmarried. The Tribunal had assessed monthly income of the deceased as Rs.3,600/- p.m. and assessed the following compensation:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	3,600/-p.m.
(ii)	1/3rd deducted as personal expenses of the deceased	3,600-1,200=Rs.2,400X12=Rs.28,800/-p.a.
(iii)	Compensation after multiplier of 3 is applied for three years	28,800X3=Rs.86,400/-

(iv)	Dependency for the remaining period	Rs.14,400X9=Rs.1,29,600/-
(v)	Total dependency	Rs.2,16,000/-
(vi)	Loss of consortium and funeral expenses	Rs.5,000/-
	TOTAL COMPENSATION AWARDED	**Rs.2,21,000/-**

Hence, the claimants were found entitled to total compensation of Rs.2,21,000/- along with interest @ 6% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

Learned counsel for the appellants is challenging the finding on the liability to make payment of compensation. He submitted that in para 14 of the award, the Tribunal has observed that the driving licence Ex.R1 was duly proved by RW1 Satish Kumar, Clerk, Licencing Auhority, SDM, Rewari the learner licence was issued in the name of respondent No.1 on 03.12.2004 and it was valid upto 02.06.2005. The respondent No.1 was holding a learning licence, and hence the insurance company was not held liable to make the payment.

At this stage reference can be made to a judgment passed by Supreme Court in ***National Insurance Co. Ltd. V/s. Swaran Singh and others 2004(2) R.C.R. (Civil) 114,*** the Supreme Court has observed that even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provision of Section 149(2) of the said Act. The Supreme Court further observed that if a vehicle at the time of accident was driven by a person having learner's licence, the insurance companies would be liable to satisfy the decree.

Keeping in view the above, the finding of the Tribunal is reversed and it is held that the learner licence is a valid licence and the insurance company would be liable to satisfy the decree.

Thereafter the Tribunal proceeded to examine the insurance policy cover note Ex.RW2/A and came to a conclusion that vehicle was charged for 3rd party but keeping in view the judgment of the Supreme Court in ***Dr.T.V.Jose Vs. Chacko P.M. @ Thankachan,*** 2001 ACJ 2059, wherein it was laid down that when the passengers are travelling in the car as gratuitous passengers, then the insurance company is not liable to pay the compensation. The Tribunal observed that a third party policy does not cover the liability to gratuitous passengers, who are not carried for hire or reward and in this backdrop, the insurance company was not held liable to make the payment of compensation and only respondents No. 1 and 2 were held liable to make the payment of compensation jointly and severally.

Learned counsel for the insurance company has referred to Supreme Court judgments passed in ***Dr.T.V.Jose Vs. Chacko P.M. @ Thankachan,*** 2001 ACJ 2059, ***National Insurance Company Ltd. V/s. Balakrishnan and another*** 2013(2)PLR 1 and Division Bench judgment of this Court passed in ***New India Assurance Company V/s. Smt. Santra Devi and others*** 2006(4) R.C.R.(Civil) 316 to contend that Act policy stands on a different footing from a comprehensive/package policy and does not cover third party risk of an occupant in a car and hence insurance company has been rightly absolved by the Tribunal.

The judgment of the Supreme Court in ***Dr.T.V.Jose (supra)*** will not be applicable as in the present case the insured has not breached the terms and conditions of the policy.

The judgment of the Supreme Court in ***Balakrishnan's case (supra)*** will not help insurance company as in this case, the Supreme Court had remanded the matter back to the Tribunal as there was no finding given by the Tribunal whether the insurance policy was Act Policy or comprehensive package policy at the time of deciding the award. In this backdrop, the Supreme Court held that Act Policy stands on different footing from Comprehensive/package policy and Act Policy cannot cover a third party risk of an occupant in a car and insurance company is liable to pay compensation if the policy is comprehensive/package policy.

Learned counsel for the insurance company has again referred to judgment of ***Santra Devi's case (supra)*** wherein the death of gratuitous passenger took place when he was travelling in commercial vehicle and as per the insurance policy, the offending vehicle was a commercial vehicle and was not authorised to take gratuitous passenger. The insurance company was absolved of the liability of making payment of compensation.

In the facts of the present case, the finding in para 15 of the award of the Tribunal is that insurance policy cover note Ex.RW2/A was with regard to the vehicle charged for 3rd party only and it was an Act policy. The company had not charged any premium with regard to the occupant/passenger traveling in the vehicle No. DL-3C-E/6217. Since the insurance policy was a third party policy and in this backdrop the judgment of Supreme Court in ***Manuara Khatun and others V/s. Rajesh Kr. Singh and others*** 2017 ACJ 1031 can be referred. In this case, the gratuitous passengers were travelling in Tata Sumo and there was a head-on-collision between the Tata Sumo and a Truck which was coming from the opposite direction. The claimants approached the Tribunal and the Tribunal held that

Tata Sumo was a private car driven by the driver in a rash and negligent manner and at a high speed and all the passengers including two deceased were travelling in the Tata Sumo for hire and hence they were held to be 'gratuitous passengers' and United India Insurance Company Ltd., the insurer of Tata Sumo (offending vehicle) was not liable to make payment of compensation. In the appeal filed before the High Court, the High Court held that the insurer was not liable because the passengers or occupants were being carried in a private vehicle as 'gratuitous passengers' and dismissed the appeal. Before the Supreme Court, while referring the judgment passed in ***Manager, National Insurance Company Limited V/s. Saju P. Paul and another***, 2013(1) RCR (Civil) 869, held that even if victim is a gratuitous passenger, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However the insurance company has to make payment of compensation and then to recover the compensation from the insured in the same proceedings by applying the principle of 'pay and recover'. In para 16, the Supreme Court observed as under:-

> "This question also fell for consideration recently in ***Manager, National Insurance Company Limited v. Saju P. Paul & Anr.,*** (supra) wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident, on the strength of the insurance policy. However, this Court keeping in view the benevolent object of Act and

other relevant facts arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover"."

Thereafter the coordinate Bench of this Court in the case of ***HDFC ERGO General Insurance Company Limited V/s. Smt. Asha and others*** 2018 AAC 1016, while referring the judgment of Supreme Court in ***Manuara Khatun and others (supra)*** has held that if an accident takes place and the deceased was gratuitous passenger then insurance company will make payment of compensation and recover the same from owner and driver. In para 15, it is observed as under:-

> "On the other hand the learned counsel for the claimants relies on the judgment in ***Manuara Khatun and others v. Rajesh Kr. Singh and others, (Civil Appeal No. 3047 of 2017) decided on February 21, 2017.*** In this case, the finding of the Tribunal was that the two deceased were travelling in a Tata Sumo for hire and hence they were gratuitous passengers and due to this reason the company-insurer of the offending vehicle-Tata Sumo was not liable. Accordingly, the Insurance Company was exonerated from liability and award was passed only against the owner of the Tata Sumo. The Supreme Court noticed its earlier decision in ***Bhagyalakshmi, Saju P. Paul and Oriental Insurance Co. Ltd. v. Nanjappan and others, (2004) 13 SCC 224*** and culled out the question which fell for consideration which was whether the claimants are entitled for an order against the insurer to pay the awarded amount to them and then to recover the said amount from the insured in the same proceedings. The Supreme Court observed in paras 20 and 22 as follows:-
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> "20) We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra).

Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

22) In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No.3)-they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

Keeping in view that insurance policy cover note Ex.RW2/A was with regard to the vehicle charged for 3rd party only and the deceased was a gratuitous passenger, the insurance company cannot be absolved of its liability to make payment of compensation.

Learned counsel for the appellants has further argued that the assessed compensation is on lower side as the deceased was a diploma holder in Computer after passing matriculation. Keeping in view the minimum wages, his income has to be taken as of skilled labourer and not of unskilled labourer.

I have heard learned counsel for the parties and perused the case file. The deceased was 24 years of age and was diploma holder in Computer. Hence, the income of the deceased can be taken as Rs.4,000/- p.m. keeping in view the minimum wages of skilled labourer in the State of Haryana in the year 2005and the compensation is hereby reassessed keeping in view the judgments passed by Hon'ble the Supreme Court in ***Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others,*** Civil Appeal No. 9581 of 2018 and ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Annual Income	4,000X12=Rs.48,000/-
(ii)	40% increase as future prospects	48,000+19,200=Rs.67,200/-
(iii)	½ deduction for personal expenses	67,200-33,600=33,600/-
(iv)	Total loss of dependency after applying multiplier of 18	33,600X18=Rs.6,04,800/-
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of filial consortium	Rs.80,000/- (Rs.40,000/- each to all the two appellants)
	TOTAL COMPENSATION AWARDED	**Rs.7,14,800/-**
	ENHANCED AMOUNT OF COMPENSATION	**7,14,800-2,21,000=Rs.4,93,800/-**

Appeal is allowed and the enhanced amount of compensation of **Rs.4,93,800/-** shall be payable within a period of three months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others,*** Civil Appeal No. 4528 of 2019. Keeping in view that the insurance policy was an Act Policy, the insurance company will make the payment of compensation firstly and will recover the amount of compensation from respondents No. 1 and 2.

(RITU BAHRI)
JUDGE

04.10.2019
Divyanshi

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