IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 1919 of 2011 (O&M)
Date of decision : 31.7.2019

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Pritpal Singh @ Honey through
his legal representatives Smt. Bhupinder Kaur
and Sulander Singh
................Appellant

vs.

Akhilesh Jha and others
................Respondents

2) FAO No. 3089 of 2011 (O&M)
...

Akhilesh Jha and another
................Appellants

vs.

Pritpal Singh @ Honey through
his next friend and natural father Sulandar Singh
and another
................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by: None for the appellant in FAO 1919-2011 and
for respondent No. 1 in FAO 3089-2011

Ms. Monika Jangra, Advocate for
Ms. Vandana Malhotra, Advocate
for respondent No.3 in FAO 1919-2011 and
for respondent No.2 in FAO 3089-2011

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H. S. Madaan, J.

By this common judgment, I intend to dispose of two appeals i.e. bearing FAO 1919-2011 titled as 'Pritpal Singh @ Honey through his legal representatives Smt. Bhupinder Kaur and Sulander Singh vs. Akhilesh Jha and others' and FAO 3089-2011 titled as 'Akhilesh Jha and another vs. Pritpal Singh @ Honey through his next friend and natural father Sulandar Singh and another', as both these appeals have arisen out of the same award.

Briefly stated, facts of the case are that petitioner – claimant Pritpal Singh @ Honey, through his next friend and natural father, Sulander Singh, had brought a claim petition against respondents i.e. Akhilesh Jha – driver, Vineet Taneja – registered owner and Bajaj Allianz General Insurance Co. Ltd., Pune – insurer of Tata Safari vehicle No. HR-38K-4700 (hereinafter to be referred as 'the offending vehicle'), claiming compensation to the tune of Rs.52,06,000/-.

As per version of the claimant, on 17.11.2006, he was pillion riding motorcycle No. HR-51P-8348, being driven by Paramjeet Singh and at about 9.30 p.m., when they reached in front of V.G. Factory, Plot No. 31, Whirlpool Chowk, Faridabad, the offending vehicle being driven by respondent No.1 Akhilesh Jha, in a rash and negligent manner, without blowing the horn, came and hit the motorcycle and resultantly both riders fell down and suffered multiple injuries. After the accident, petitioner claimant was shifted to Escorts Hospital, Faridabad, where he was treated and medically examined. He remained in coma for 75 days. He had suffered 100% disability and was still under treatment. FIR No. 340 dated 18.11.2006 was registered for offences under Sections 279, 337 IPC at Police Station Mujessar, against respondent No.1 Akhilesh Jha relating to them. The petitioner claimant had spent about Rs.10 lacs on his treatment and more money was required for his further treatment. He was a trained mechanic and was earning Rs.8,000/- per month from his employment with one Mr. Gaffar, his employer. He was doing independent work of repairs of cars, scooters etc., earning Rs.3,000/- per month. His total earning was Rs.11,000/- per month. After suffering injuries in the accident, he was not in a position to do any work.

On notice all the three respondents appeared and filed written statements contesting the claim petition. Issues on merits were framed. Parties were afforded opportunities to lead evidence and then after hearing the arguments, Motor Accidents Claims Tribunal, Faridabad, accepted the claim petition and granted compensation of Rs.26,27,600/- to the claimant, payable by respondents No. 1 and 2 with interest @ 6% per annum from the date of filing of claim petition till 15.3.2010 and from 13.10.2010 till final realization. Respondent No.3 Insurance company was not found liable to indemnify respondents No. 1 and 2, for the reason that respondent No.1 was holding learners license on the date of accident. However, respondents No.3 – Insurance company was directed to pay the compensation to the claimant with a right to recover the same from respondents No. 1 and 2 by filing an execution petition.

Feeling aggrieved, petitioner – claimant has preferred FAO-1919-2011, against the said award being of the view that compensation awarded to him was on lower side. However, respondents No. 1 and 2 have also filed a separate appeal bearing FAO-3089-2011, mainly feeling aggrieved with the recovery rights granted to the Insurance company.

Notice of the appeals was given to the respective respondents, who put in appearance.

I have heard learned counsel for the respondent No.3 Insurance company, since only she had come present to address the arguments on the last date of hearing, which was final opportunity granted to counsel for the parties to address the arguments and counsel for the appellants in both the appeals were not present.

It may be mentioned here that learned counsel for the appellant had made a statement before this Court on 11.12.2015 that appellant had died and sought permission to implead his legal heirs and his legal heirs were impleaded.

Now, the question arises as to whether legal heirs can pursue the claim petition in such a manner. The answer has to be in negative.

Counsel for the Insurance company had referred to a judgment of Full Bench of Madhya Pradesh High Court at Gwalior, reported as ***Bhagwati Bai and another vs. Bablu @ Mukund and others 2007 (1) RCR (Civil) 723***, wherein it was observed that when a claim petition under Section 166 of the Motor Vehicle Act, is filed by a victim of roadside accident, who dies during pendency of the petition, then the claim for personal injuries would abate and legal representatives of the deceased claimant cannot prosecute the application for compensation except as regards the claim for pecuniary loss to the estate of the claimant.

In view of such judgment, in absence of any judgment to the contrary being cited by counsel for the appellant, who had not come present on the last date of hearing to address the arguments, it is observed that this appeal (FAO-1919-2011) cannot proceed further on account of death of appellant – injured Pritpal Singh @ Honey. The legal heirs can certainly receive the compensation amount awarded by the Motor Accident Claims Tribunal, alongwith interest and costs from respondent No.3 – Insurance company which could recover the same from respondents No. 1 and 2. However, they cannot seek enhancement of the compensation amount so granted by the Tribunal. Therefore, the FAO-1919-2011, is doomed for failure and is dismissed accordingly.

Now coming to the second appeal filed by Akhilesh Jha and Vineet Taneja, driver and owner of the offending vehicle, the Tribunal on proper appraisal and appreciation of evidence had come to the conclusion that at the relevant time, respondent No.1 was possessing learner's license only (Exhibit R-2), which means that he was not having a valid driving license and he was not authorized to drive light motor vehicle and was not following mandatory rules at the time of accident. Respondent No.1, while getting his statement recorded before the Tribunal in his cross examination admitted that in November 2006 he was holding learner's license. The Tribunal had observed that respondent No.1 was holding learner's license on the date of accident to drive motorcycle, scooter and car, as such he was not authorized to drive light motor vehicle. Though respondents No. 1 and 2 had tried to show that the vehicle was being driven by respondent No.1 under supervision of person holding a valid permanent driving licence i.e. RW-3, and all the rules and regulations as regards to driving by learner's license holder were followed and had examined RW-3 in that regard. But it seems that this plea has been taken by such respondents just to avoid the liability to pay the compensation. This being violative of terms and conditions of the Insurance Policy, the Insurance Company was rightly absolved of any liability to indemnify the insured with regard to its liability to pay the compensation to the claimant. Though the Tribunal has rightly directed the Insurance company to discharge the liability and then recover the amount paid by it from respondents No. 1 and 2 by filing an execution application, keeping in mind the fact that claim petition filed under Section 166 of Motor Vehicle Act, 1988 is a piece of welfare legislation. Therefore, no modification in the award is needed with respect to recovery rights as granted by the Tribunal to the Insurance company. Even otherwise, on quantum also, the compensation has been awarded to the claimant considering the nature and extent of his injuries, his monthly income, amount spent on his treatment and under various conventional heads. The claimant having suffered 100% disability and he having expired during pendency of the appeal, the amount so awarded can certainly be not taken to be on higher side and does not call for any reduction.

The argument that the vehicle was being driven under guidance of the person holding a valid permanent driving license, does not appear to be convincing. No such plea was taken by respondents No. 1 and 2 in their written statements. Rather they have flatly denied the accident itself. Respondent No.1 Akhilesh Jha, in his affidavit tendered in examination-in-chief, Exhibit RW-2/A has not mentioned even a word in that regard, though Vineet Taneja, in his affidavit Exhibit RW 3/A has mentioned so, it seems to be an afterthought story and does not seem to be plausible and convincing.

Rather from the facts and circumstances of the case, it comes out that the vehicle was knowingly and intentionally handed over to respondent No.1, who was not holding a legal and valid driving license, to drive it.

Accordingly, there is no merit in the appeal bearing FAO-3089-2011 and the same stands dismissed.

(H.S. Madaan)
Judge

31.7.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No