IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 7076 of 2011
DATE OF DECISION :- October 04, 2019

Amandeep Kaur and others ...Appellants

Versus

Dalip Singh and others ...Respondents

F.A.O. No. 6109 of 2011

Usha Malik and another ...Appellants

Versus

Amandeep Kaur and others ...Respondents

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

Present:- Mr. Rohit Kumar, Advocate
for Mr. Namit Gautam, Advocate for the appellants
in F.A.O. No. 6109 of 2011 and for respondents No. 2 and 3
in F.A.O. No. 7076 of 2011.

Mr. Anupam Singla, Advocate for the appellants
in F.A.O. No. 7076 of 2011 and for respondents No. 1 to 4
in F.A.O. No. 6109 of 2011.

Mr. Sanjiv Pabbi, Advocate for respondent No. 6.

***

My this order shall dispose of two appeals bearing F.A.O. No. 7076 of 2011 filed by the claimants and F.A.O. No. 6109 of 2011 filed by legal representatives of Sh. Surinder Mohan Malik, owner of the offending truck.

Briefly stated facts of the case are that on account of death of Ranbir Singh, in a motor vehicular accident which took place on 15.5.2008 at about 1.30 A.M., in the area of village Sheikhupura, statedly on account of rash and negligent driving of Truck bearing registration No. GJ-6T/6851 by respondent No. 1 Dalip Singh, legal representatives of deceased namely his widow Smt. Amandeep Kaur, aged about 22 years, Harshpreet Singh, his son aged about 4 years, Ranjeet Kaur-mother, aged about 55 years and Surjit Singh-father, aged about 58 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Dalip Singh-driver, Surinder Mohan Malik-owner and United India Insurance Co., Kotakpura-insurer of the said Truck(hereinafter referred to as the offending Truck), claiming compensation.

On notice, all the respondents appeared and offered a contest.

On conclusion of the trial, the Motor Accident Claims Tribunal, Patiala vide Award dated 25.5.2011 accepted the claim petition and awarded compensation of Rs.12,44,,000/- to the claimants payable by respondents No. 1 and 2 along with interest at the rate of 6% per annum from the date of filing of the claim petition till actual realization. It was directed that the Insurance Company would be liable to pay the compensation at the first instance and then have a right to recover the same from the legal heirs of respondent No. 2 Surinder Mohan Malik-owner of the offending truck. However, the claimants were not satisfied with the compensation awarded to them by the Motor Accident Claims Tribunal, Patiala and have brought the present appeal seeking enhancement of compensation of the said amount. Similarly, legal representatives of respondent No. 2- Surinder Mohan Malik were aggrieved by the grant of recovery rights to the Insurance Company and they have also filed a separate appeal. Notice of the appeals was given to the respective respondents, who have put in appearance.

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

The Tribunal taking into view the fact that the age of the deceased was mentioned to be 26 years in his post mortem report had taken his age to be such not considering the oral evidence adduced by the claimants that he was aged about 23 years. The Tribunal was of course justified in doing so and no different view in that regard needs to be taken. With respect to income of the deceased it is to be assessed Rs.8,000/- per month. Considering that the deceased was not a income tax payee again no fault can be found with the Tribunal in doing so.

The Tribunal has not added any amount towards future prospects. In terms of the judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** where age of the deceased was below 40 years an addition of 40% of the established income is to be made. Doing that the monthly income of the deceased is worked out to be Rs.11,200/- (8000 + 3200).

Considering the number of dependent family members, 1/4th of the amount is to be deducted towards personal and living expenses of the deceased. Doing that the monthly dependency of the claimants comes out to Rs.8400/- (11,200 – 2800). The annual dependency is calculated as Rs.10,08,00/- (8400 x 12). Multiplier of 17 was properly used by the Tribunal. In that way, the total compensation comes out to Rs.17,13,600/-

(10,08,00 X 17). The Tribunal has awarded a sum of Rs.5,000/- on account of funeral expenses, Rs.10,000/- on account of loss of consortium to the widow of the deceased and Rs.5,000/- towards loss of estate, whereas in view of ratio of '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** the claimants are entitled to get total 70,000/- under those Heads. Making addition of that amount the total compensation amount is calculated as Rs.17,83,600/- (17,13,600 + 70,000). The Tribunal has awarded interest at the rate of Rs.6% per annum, which I find to be somewhat on the lower side and interest at the rate of 7.5% per annum is granted to the claimants.

Coming to the appeal filed by the legal hears of owner of the Truck, the Tribunal in para no. 20 has mentioned that the Truck was not having a valid permit on the date of accident which amounted to violation of terms and conditions of the Insurance policy. The Tribunal has granted recovery rights to the Insurance Company for that reason. Since legal heirs of the deceased-owner of the Truck could not place on file the valid permit of the Truck, therefore, the Tribunal cannot be faulted for granting recovery rights to the Insurance Company for the reason of there being violation of terms and conditions of the Insurance policy.

The Tribunal had come to the conclusion that the accident had taken place on account of rash and negligent driving of the Truck. In view of judgment ***National Insurance Company Ltd. Versus Chella Bharathamma 2004(4) R.C.R. (Civil) 399***, the Apex Court had observed that when the insured vehicle being plied without permit the insurer cannot be made liable. However, insurer may be asked to satisfy the third party claim/award and recovery from the insured by executing the award like a decree against him.

Accordingly, the appeal bearing F.A.O. No. 6109 of 2011 filed by the owner is dismissed and that of claimants bearing F.A.O. No. 7076 of 2011 is partly allowed. The enhanced amount of compensation shall be apportioned among the claimants proportionately in terms of the direction issued by the Tribunal in the impugned award. The other terms and conditions of the impugned Award shall remain the same.

(H.S. MADAAN)
JUDGE

October 04, 2019
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No