IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 19.07.2019

FAO 4007 of 2012

Oriental Insurance Company Limited ....Appellant

Versus

Smt. Kamla Devi and others ....Respondents

FAO 4008 of 2012

Oriental Insurance Company Limited .....Appellant

Versus

Hari Mohan and others ....Respondents

FAO No. 853 of 2013

Kamla and others ....Appellants

Versus

Irshad Ali and others .....Respondents

FAO 854 of 2013

Hari Mohan ......Appellant

Versus

Irshad Ali and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R C Gupta, Advocate
for the Insurance Company-Oriental Insurance Co Limited

Mr. Manoj Kumar Sood, Advocate
for the claimants

Mr. Ashwani Talwar, Advocate
for respondent No. 10 (FAO 4007 of 2012)
for respondent No. 7 (FAO No. 853 of 2013)

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 12.03.2012 passed by the Motor Accident Claims Tribunal, Palwal (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Dev Kumar Sharma and injuries sustained by Hari Mohan in a motor vehicular accident that took place on 29.08.2008.

FAO Nos. 4007 and 4008 of 2012 have been filed by Oriental Insurance Company Limited (hereinafter referred to as 'the insurance company') whereas FAO No. 853 of 2013 has been filed by Kamla and others for enhancement of compensation qua death of Dev Kumar Sharma and FAO 854 of 2013 by injured Hari Mohan for the same relief.

FAO 4007 - 4008 of 2012

Counsel for the insurance company would inform that only issue that survives for consideration is in respect of the insured being guilty of violating terms and conditions of policy and as such, the insurance company is entitle to have recovery right against the insured after payment of compensation to the claimants.

For facility of reference, facts are taken from FAO No. 4007 of 2012.

Counsel for the insurance company would contend that the Tribunal in concluding para of the award has held that dispute with regard to violation of the policy is *inter se* respondents No. 1 and 2 and respondent No. 3 insurance company. Respondent No. 3 - Oriental Insurance Company can recover the amount as per law by establishing violation of insurance policy. It is argued that the owner/insured of offending vehicle bearing No. UP-25Q-9390 DCM did not contest proceedings before the Tribunal nor discharged his primary obligation of supplying particulars of driving licence and permit and as such, the insurance company has been deprived of an opportunity to seek necessary verification with regard to validity or otherwise of those documents and accordingly, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants. In addition, it is argued that the insurance company served a notice upon the insured calling upon to supply copies of the relevant documents and said notice is marked as Ex.R1.

There is no representation on behalf of the owner despite service. Similarly, driver of offending vehicle neither contested the proceedings before the Tribunal nor before this Court despite service.

The Tribunal framed issue No. 3, reads thus:-

> *"Whether respondent No. 1 and 2 have violated the terms and conditions of insurance policy, if so, to what effect? OPR-3"*

The Tribunal, in para 23 of the award, has held that neither respondent No. 3 nor respondents No. 1 and 2 have taken care to bring the factual position before the Tribunal with regard to status of route permit and driving licence of respondent No. 1. In such circumstances, the Tribunal is bound to draw adverse inference against respondents No. 1 to 3. Moreover, dispute with regard to violation of policy is between the insurer and insured *inter se*. It cannot affect the rights of third party.

Indisputably, driver and insured of offending vehicle did not contest the proceedings before the Tribunal. The insurance company placed on record copy of legal notice Ex.R1 and postal receipts Ex.R2 and R3. Till date, there is no challenge to these documents by driver and owner of the offending vehicle. As owner of offending vehicle failed to discharge his primary obligation of supplying particulars of driving licence possessed by driver and permit of the vehicle and as such, denying an opportunity to seek necessary verification thereof, it has to be inferred that either the driver was not possessing a driving licence or licence possessed by him was not valid and there was no permit to ply the vehicle at a public place. Resultantly, findings of the Tribunal on issue No. 3 cannot sustain. In view of the above, the insured has violated the terms and conditions of policy constituting a defence in favour of the insurer. That being so, findings of the Tribunal on issue No. 3 are set aside and the same is answered in favour of the Insurance Company. As a natural corollary, the Insurance Company shall have righty of recovery against insured after payment of compensation to the claimants.

In view of what has been discussed hereinbefore, the appeals are partly allowed in the aforesaid terms.

FAO No. 853 of 2013

The Tribunal awarded Rs.6,25,000.00, detailed hereunder:-

-Monthly income of the deceased	Rs.5,000/-
-Deduction for personal expenses	1/3rd
-Multiplier	15
-Loss of dependency	Rs.6,00,000/-
-Transportation and last rites	Rs.5,000/-
-Loss of consortium	Rs.10,000/-
-Loss of estate	Rs.10,000/-

The plea of claimants is that monthly income of Dev Kumar Sharma was Rs.40,000/-. Arun Kumar (PW9) Tax Assistant from income tax department, Faridabad appeared in the witness box and produced documents Ex.PW9/A and Ex.PW9/B i.e. income tax returns for the assessment years 2006-07 and 2007-08. The Tribunal misdirected itself by ignoring income tax returns while assessing income of the deceased.

Taking into consideration latest income tax return for the assessment year 2007-08 filed by the deceased wherein income from business profession is Rs.1,02,067/-, income of the deceased is assessed at Rs.1,02,067/- per annum. The deceased was born on 02.08.1969, he met with accident on 29.08.2008 and died on 01.09.2008, therefore, he was less than 40 years of age at the time of occurrence. The claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier applied is correct and affirmed.

The application for compensation has been filed by the widow, two sons and a daughter of the deceased. Admissible deduction for personal expenses would be 1/4th. As such, loss of dependency comes to Rs.16,07,555.50 (Rs.15,30,930/- *i.e.* 1,02,067 x 15 + Rs.6,12,402/- (40% addition) – Rs.5,35,851.50/- (1/4th deduction)).

Under conventional heads, claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

In view of the above, total compensation is Rs.16,77,555.50/- and additional amount is Rs.10,52,555.50/- (16,77,555.50 – 6,25,000), payable with interest @ 7.5% per annum from the date of petition till realization.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

FAO 854 of 2013

The Tribunal awarded Rs.8,00,000-, detailed hereunder:-

-100% disability @ Rs.2,500 per 1% disability	Rs.2,50,000/-
-Pain and sufferings	Rs.1,00,000/-
-Transportation and future expenses	Rs.50,000/-
-Nourishment and diet	Rs.50,000/-
-Attendant charges	Rs.50,000/-
-Medical expenses	Rs.3,00,000/-

Counsel for the appellant would state that the Tribunal has allowed medical reimbursement to the tune of Rs.3,00,000/- whereas total value of medical bills produced and proved on record are of Rs.3,04,031/-. As such, additional sum of Rs.4,031/- (3,04,031 - 3,00,000) is allowed on account of medical expenses.

As is evident from statement of Dr. Vikas (PW3), the injured suffered 100% disability. He would depose that the injured is not in a position to walk due to damage to his backbone. There is no clear evidence on record with regard to avocation and income of the injured. Taking a clue from notification issued by the State of Haryana, fixing minimum wage, income of the victim is assessed at Rs.3,700/- per month. The injured was in the age bracket of 35-40 years old at the time of occurrence. Accordingly, addition in income for future prospects would be @ 40% and multiplier is 15. As such, future loss of income on account of disability is calculated at Rs.9,32,400/- (Rs.6,66,000/- *i.e.* 3,700 x 12 x 15 + Rs.2,66,400/- (40% addition)). The claimant shall be entitle to Rs.1,00,000/- towards loss of amenities of life.

Taking into consideration that the victim has suffered 100%

disability, he would need services of an attendant through out his life. The value of services of an attendant is assessed at Rs.3,000/- per month and by applying multiplier of 15, the claimant is awarded Rs.5,40,000/- for services of an attendant. Compensation allowed by the Tribunal for pain and sufferings, transportation and future expenses, nourishment and diet are affirmed. A sum of Rs.2,50,000/- in respect of disability and Rs.50,000/- for attendant charges would be adjusted out of compensation allowed under the aforesaid two heads.

In view of the above, total compensation is Rs.20,76,431/- (9,32,400 + 1,00,000 + 1,00,000 + 50,000 + 50,000 + 5,40,000 + 3,04,031) and additional amount is Rs.12,76,431/- (20,76,431-8,00,000), payable with interest @ 7.5% per annum from the date of petition till realization. Except the sum of Rs.50,000/-, remaining additional amount shall be invested in fixed deposit and interest accruing thereon shall be payable to the claimant. Claimant shall be entitle to withdraw a sum of Rs.50,000/- forthwith and Rs.25,000/- on expiry of each year.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

19.07.2019
Mohan Bimbra

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