IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-10187-2014(O&M)

Smt.Sunita Devi and another

...Appellants

Versus

Ajay Pal and others

...Respondents

(2) FAO-855-2015(O&M)

HDFC ERGO General Insurance Company

...Appellant

Versus

Smt.Sunita Devi and others

...Respondents

Date of Decision:-5.9.2019

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

Present: Mr.Gurinder Pal Singh, Advocate
for the appellants in FAO-10187-2014 and
for respondents No.1 and 2 in FAO-855-2015.

Mr.A.K. Yadav, Advocate
for respondents No.1 and 2 in FAO-10187 of 2014 and
for respondents No.3 and 4 in FAO-855-2015.

Ms.Vandana Malhotra, Advocate
for the appellant in FAO No.855-2015 and

for respondent No.3 in FAO-10187-2014.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-10187-2014 filed on behalf of appellants – Smt.Sunita Devi and another and FAO-855-2015 filed on behalf of appellant – insurance company, which have arisen out of the same accident.

In nutshell, facts of the case are that petitioners/claimants Smt.Sunita Devi aged 36 years – mother and Sh.Niranjan aged about 38 years – father of Akshey Kumar, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Ajay Pal – driver, Aastha Public School, Basduda, Tehsil and District Rewari – owner and HDFC ERGO General Insurance Company Ltd. - insurer of bus bearing registration No.HR-47-8300 (hereinafter referred to as the offending bus), claiming compensation to the tune of Rs.50 lakhs.

As per version of the petitioners/claimants, on 21.2.2013 at about 3:30 p.m., their son Akshey Kumar was returning home from school in the bus belonging to the school, which was being driven by respondent No.1 – Ajay Pal in a rash and negligent manner and at a high speed without observing traffic rules; the front door of the bus was open and when the bus was going on Bohka-Dhani Kolala Kaccha passage, then suddenly Akshey Kumar fell down from the front door; the respondent No.1 stopped the bus a little distance ahead; Niranjan was coming from his fields on the same passage and the offending bus had passed by his side; he had seen Akshey Kumar falling down from the offending bus and when he reached nearby, he found that the boy, who had fallen down from the offending bus was his son Akshey Kumar; he immediately took Akshey Kumar to General Hospital, Rewari for treatment, where the doctor on duty declared him dead; the accident was reported to the police and FIR No.35 dated 21.2.2013 for the offences under Sections 279 and 304-A IPC was registered at Police Station Khol against respondent No.1 Ajay Pal.

As per the version of the claimants, the deceased was aged about 13 years and was a brilliant student and had a bright future and by his death they have been deprived of his love and affection.

On being put to notice, all the respondents had appeared and filed written statements. Respondents No.1 and 2 had filed a joint written statement contending that no accident had taken place due to rash and negligent driving of the bus in question by respondent No.1 and a false case had been got registered against him with solitary motive to get compensation. According to the answering respondents, if the Tribunal came to the conclusion that accident had taken place with the school bus in question, then it was duly insured with respondent No.3 – insurance company, which would be liable to pay compensation.

In the written statement filed by respondent No.3 – insurance company, it took up preliminary objections that the driver of the bus was not holding a valid and effective driving licence to drive the school bus at the time of alleged accident and the bus was being driven in violation of the terms and conditions of the insurance policy. Material assertions in the claim petition were refuted denying liability of such respondent to indemnify the insured with regard to the award amount.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as the Tribunal) while allowing the petition partly vide award dated 9.4.2014, awarded compensation of Rs.2,35,000/- along with interest @ 6% per annum from the date of filing of the petition to the claimant payable by the respondents jointly and severally. The manner in which the compensation was to be apportioned was also given in the award.

The appellants/petitioners/claimants being of the view that the compensation awarded was on lower side, have approached this Court by way of filing an appeal seeking enhancement of compensation.

On the other hand, respondent No.3 – insurance company feeling that the amount of compensation awarded is on the higher side has also filed an appeal.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

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

The Tribunal in light of the eye-witness account provided by PW2 Niranjan – father of deceased, which was in consonance with the case of claimant as given in the claim petition as well as considering the

FIR regarding the accident Ex.PA, challan Ex.PB, charge-sheet Ex.PC, postmortem report of the deceased Ex.PD, in view of the ratio of judgment ***Girdhari Lal Versus Radhey Sham and others, 1993(2) PLR 109*** and noticing that respondent No.1 had not appeared in the witness-box to deny the case of petitioners, had returned the finding that respondent No.1 – Ajay Pal was author of the accident by his rash and negligent driving of the offending bus. This finding has been properly given and no interference therewith is called for.

Though learned counsel for the appellant – insurance company came up with a plea that it was a case of contributory negligence but this contention is totally devoid of any merit. The driver and conductor of the bus should have insured that all the doors were closed while the school bus was in motion. It was a big lapse on their part that front door of the bus remained open while the bus was moving. The deceased can certainly be not held to have contributed to the accident by committing any fault. He being a young boy travelling in the school bus, if he fell down from the bus through the open door, the fault was entirely of the driver of the bus or any other attendant present in the bus and it can certainly be not taken to be a case of contributory negligence. Such contention of learned counsel for the insurance company is rejected.

Learned counsel for the appellant – insurance company has further argued that the driver of the offending bus was not having a valid and effective driving licence to drive the school bus, as such the insurance company should be absolved of its liability to pay compensation or at least should be permitted to recover the amount of compensation paid by it from the insured and driver.

However, learned counsel appearing for the respondents has contended that the respondent No.1 driver was having a valid and effective driving licence and in his licence Ex.R1, it is clearly mentioned that he is licenced to drive throughout India vehicles i.e. M.C. With Gear, TRV-PSV-Bus, TRV RigidChasi, LMV-private only. He has further stated that respondent No.2 had obtained information from RTA, Narnaul and was informed that the licence having showing TRV-PSV-Bus could drive the bus.

Learned counsel for representing such respondents has referred to judgment ***Mukund Dewangan Versus Oriental Insurance Company Ltd., 2017(4) RCR(Civil) 111*** by the Apex Court wherein it was observed that when a driver is holding a licence to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle.

The Tribunal dealing with such aspect while deciding issue No.3 has given verdict holding that respondent No.1 was having a valid and effective driving licence at the time of accident. Therefore, I do not see any reason to differ with the Tribunal on that point.

The insurance company cannot escape liability to pay or in the alternative ask for recovery rights.

As regards the quantum of compensation, the deceased was aged about 13 years. His age is mentioned to be so in the postmortem report. Though counsel for the claimants had referred to judgment ***Kishan Gopal and another Vs. Lala and others, 2013(4) RCR(Civil) 276*** by the

Hon'ble Supreme Court, wherein in case of death of child aged 10 years, who was assisting his parents in agricultural occupation, it was observed that had the deceased child been alive, he would have contributed substantially to the family of the appellants by working hard; his monthly income was taken to be Rs.30,000/- and keeping in view the ages of parents of the deceased, multiplier of 15 was applied with compensation amount calculated as Rs.4,50,000/- and Rs.50,000/- were awarded under conventional heads i.e. loss of love and affection, funeral expenses, last rites etc., in that way compensation of Rs.5 lakhs was granted. The Tribunal ignored the judgment for unconvincing reasons observing that the deceased was non-earning member of the family and there was no evidence to show that he was assisting his father in his work. The Tribunal should have been alive to the realities of life. A 13 years old boy is normally expected to render some help to his father and mother in their respective works, which has to be taken into consideration. The facts of the judgment ***Kishan Gopal and another*** (supra) are almost the same as that of the present case. The compensation awarded calls for enhancement. Therefore, the same is enhanced to Rs.5 lakhs in light of the criteria for awarding of compensation given in judgment ***Kishan Gopal and another*** (supra) by the Apex Court.

The Tribunal has awarded compensation of Rs.2,35,000/-. The same is enhanced to Rs.5,00,000/-. The interest granted by the Tribunal @ 6% per annum was also on lower side. The claimants would be entitled to recover the enhanced amount of compensation (Rs.5,00,000 – Rs.2,35,000 = Rs.2,65,000/-) with interest @ 7.5% per annum from the date of filing of the appeal till actual realization, payable by respondents No.1 to 3 jointly and severally. The amount of enhanced compensation shall be shared by both the claimants equally. The amount in equal shares be deposited in the bank accordingly and then they would free to withdraw the amount therefrom.

With such modification, the FAO-10187-2014 filed on behalf of the claimants is allowed partly with costs.

Consequently, FAO-855-2015 filed on behalf of the insurance company stands dismissed.

5.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No