In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 14.11.2019

FAO No. 10373 of 2014 (O&M) and
Cross Objections No. 61-CII of 2017

Subhash Chand and another

---Appellants

versus

Bajaj Allianz General Insurance Company Limited and others

---Respondents

CR No. 5272 of 2015 (O&M)

Subhash Chand and another

---Petitioners

versus

Vijay Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vipul Aggarwal, Advocate
Ms. Sunita Gupta, Advocate
for Mr. Mohd. Arshad, Advocate
for the appellants and
for the petitioners

Mr. Punit Jain, Advocate,
for the insurance company

Mr. Ashok Kaushik, Advocate
for respondents No. 2 & 3/cross objectors in FAO-10373-2014
for respondents No. 1 and 2 in CR-5272 of 2015

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Rekha Mittal, J.

CM No.28596-CII of 2014
C M No. 8700-CII of 2017

Prayer in these applications is for condoning delay of 117 days in filing the appeal and 494 days in filing the cross objections.

In view of averments made in the application and arguments advanced by counsel for the applicants, applications are allowed and delay of 117 days in filing the appeal and 494 days in filing the cross objections stands condoned.

Disposed of accordingly.

Main case(s)

This order will dispose of FAO No. 10373 of 2014, Cross objections No. 61-CII of 2017 and Civil Revision No. 5272 of 2015 as these are the off shoot of award dated 2.5.2014 passed by the Motor Accidents Claims Tribunal, Palwal (in short "the Tribunal") whereby compensation has been assessed on account of death of Rohit in a motor vehicular accident that took place on 8.5.2011. For facility of reference, facts are taken from FAO No. 10373 of 2014.

Counsel for the appellants (owner and driver of offending vehicle Maruti Van No. HR-74-4682) would argue that findings of the Tribunal on issue No. 4, taken up jointly with issue No. 3, that since offending vehicle was used for hire or reward, the insured in guilty of violating the terms and conditions of policy on the basis whereof the insurance company has been exonerated of liability to pay compensation, are illegal, unsustainable and may be set aside. In the alternative, it is argued that even if findings of the Tribunal with regard to violation of terms and conditions of policy in view of findings on issue No. 4 are sustained, the insurance company, at best, can press for right of recovery against the insured after payment of compensation to the claimants.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal exonerating insurance company of liability to pay compensation as the vehicle was used for hire or reward in violation of policy conditions. It is further submitted that circular dated 16.11.2009 was issued by the Insurance Regulatory and Development Authority (in short "IRDA") and in view thereof, insurance company is not liable to pay compensation as passengers carried in a car can not claim to be third parties for the purpose of grant of compensation.

Counsel for the appellants has not challenged findings that offending vehicle was used for hire or reward, based upon testimony of Parmod PW2, examined by the claimants. Neither Subhash Chand nor Surender Singh appeared in the witness box to counter testimony of Parmod in respect of the vehicle being used for carrying passengers on payment of fare. That being so, findings of the Tribunal that offending vehicle was used for hire or reward in violation of policy conditions merit affirmation and ordered accordingly.

The question for consideration is, whether insurance company can be exonerated of liability to pay compensation to the claimants even if the vehicle was used for hire or regard in violation of policy conditions.

Indisputably, the policy obtained by Subhash Chand is a package/comprehensive policy. As per the policy, vehicle was insured for own damage as well as third party. When the case is examined in the light of Judgment of Hon'ble the Supreme Court **National Insurance Company vs. Balakrishnan and another 2013 ACJ 199,** the insurance company can not escape liability to pay compensation to the claimants. At the same time, since the insured is guilty of violating the terms and conditions of the policy, the insurance company shall be entitle to have right of recovery against the insured after payment of compensation to the claimants. In this view of the matter, findings of the Tribunal on issue No. 4 are modified accordingly.

This brings the court to Cross objections filed by the claimants for enhancement of compensation. The Tribunal awarded Rs.2,50,000/-, detailed hereunder:-

Notional income of the deceased	Rs. 15,000/- per annum
Multiplier	16
Loss of dependency	Rs. 2,40,000/-
Transportation and last rites expenses	Rs. 10,000/-

Counsel for the claimants-cross-objectors would argue that deceased was a student of 9th class and approximately 16 years of age as he was born on 20.10.1995. It is further argued that compensation may be allowed by assessing proper income of the deceased.

Counsel representing the insurance company, owner and driver of offending vehicle have supported assessment of compensation.

Be that as it may, it is undisputed position of the case that deceased was 15 years and about 7 months old at the time of unfortunate occurrence. He was a student of 9th class at the relevant time. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with educational qualification of the deceased, income of deceased is assessed at Rs. 4800/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. In this context, reference can be made to judgment of this Court **National Insurance Company Limited vs. Pushpa Singh Chauhan and others, FAO No. 1502 of 2015** decided on 20.3.2015 affirmed by Hon'ble the Supreme Court in SLP (Civil) No. 19533 of 2015. Admissible multiplier and deduction for personal expenses, in the light of judgment of Hon'ble the Supreme Court

Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (3) RCR(Civil) 77, is 18 and 50% respectively. In this manner, loss of dependency is Rs. 7,25,760/- [4800 x12x18 + (40% thereof) – 50%)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs. 30,000/-, detailed hereunder:-

Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 7,55,760/- and the additional amount is Rs. 5,05,760/-, payable with interest @ 7% per annum from the date of petition till realization, to mother of the deceased, to be invested in fixed deposit for a period of one year.

CR No. 5272 of 2015

Counsel for the petitioners would state that in view of disposal of FAO No. 10373 of 2014, the petition may be disposed of having rendered infructuous.

Ordered accordingly.

In view of what has been discussed hereinabove, the appeal, cross objections and civil revision stand disposed of.

(Rekha Mittal)
Judge

14.11.2019
PARAMJIT

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