IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1279 of 2014 (O&M)
and Cross. Obj. No.93-CII of 2016
Date of decision : 31.7.2019
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United India Insurance Co. Ltd.
................Appellant

vs.

Bikram Jit and others
.................Respondents

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

Argued by : Mr. Pardeep Goyal, Advocate for the appellant

Mr. A.K. Spehia, Advocate for respondents No. 1 and 2.

None for respondents No. 3 and 4/cross objectors.
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H. S. Madaan, J.

Ram Kishan – father and Smt. Sita – mother of Master Ankush, aged about 2 years, an unfortunate victim of a roadside accident, had filed a claim petition under Section 166 of the Motor Vehicle Act, against the respondents i.e. Bikram Jit – driver, Gurmukh Singh – owner and United India Insurance Company Limited, Kapurthala, - Insurer of bus No. PB-09-G-9156 (hereinafter to be referred to as 'the offending bus'), claiming compensation of Rs. 5 lacs.

As per case of the claimants, on 15.4.2011, at about 7.30 A.M., Shingara Ram father of petitioner claimant No.1 Ram Kishan, was going to Jalandhar from his village Kotla Janga on a motorcycle , make Hero Honda Splendor bearing Registration No. PB-08BN-5598. His daughter-in-law Sita claimant No.2 was pillion riding on that motorcycle. She was holding her minor son Ankush in her lap. A school bus of yellow colour having registration No. PB-09-G-9156, being driven by respondent No.1 Bikram Jit, at a very high speed in a rash and negligent manner without blowing horn, hit the motorcycle near Lakkar Wala bridge. In the process, minor Ankush suffered injuries. He was taken to Civil Hospital, Jalandhar, where he expired.

On being put to notice, all the three respondents appeared and file separate written statements, contesting the claim petition.

Issues on merits were framed. Parties were afforded adequate opportunities to lead their respective evidence. After hearing the arguments, the Motor Accident Claims Tribunal, Jalandhar, vide award dated 3.1.2014, accepted the claim petition and awarded compensation of Rs. 1 lac to the claimants alongwith interest @ 6% per annum from the date of filing of claim petition till actual realization, the liability of all the respondents to pay this amount being joint and several.

Respondent No.3 Insurance company was aggrieved by the award and has filed the present appeal. The claimants are also aggrieved by the award and have filed cross objections.

Notice of the appeal was given to the respondents, who put in appearance through counsel.

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

On the basis of evidence produced before it, the Tribunal had decided issue No.1 in favour of the claimants and against the respondents, holding that respondent No.1 was author of the accident by his rash and negligent driving of the offending bus, resulting in death of Master Ankush. The claimants being parents of the deceased were found to be entitled to recover compensation. Issue No. 6 was decided against respondent No.3 holding that respondent No.1 was having a legal and valid driving license to drive the offending vehicle and bus was having valid route permit also. In that way, respondent No.1 was authorised to drive a commercial vehicle. The Insurance policy was also issued for a commercial vehicle and no fault could be found with the license. No violation of term and conditions of the Insurance Policy was found to be there. Therefore, Insurance Company was held to be liable to indemnify respondent No.2 Insured with regard to his liability to pay the compensation to the claimants.

Counsel for the claimants had referred to judgment ***Mukund Dewangan vs. Oriental Insurance Company Limited 2017 (4) RCR (Civil) 111***, wherein it was observed that when a driver is holding a license to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle.

Accordingly the appeal is dismissed.

The cross objections have been filed by the claimants belatedly by 509 days. Claimants had lost their minor son in a tragic roadside accident. Section 166 of the Motor Vehicle Act, is a piece of Welfare Legislation enacted by the Parliament to provide compensation to the persons who lost their family member /relative in roadside accident and so also to the persons who suffered injuries in such mishaps. The liberal and sympathetic approach is required to be applied. The claimants would not have gained anything by late filing of the cross objections. The delay does not appear to be intentional or deliberate. Therefore, ends of justice demand that keeping in view facts and circumstances, the delay should be condoned.

Accordingly, the delay in filing cross objections is condoned.

With regard to compensation awarded of Rs. 1 lac, the same is on lower side. In judgment reported as ***R.K. Malik and another vs. Kiran Pal and others 2009 (4) Recent Apex Judgments (RAJ) 55***, the Apex Court, while dealing with a case when 29 school going children had died in an accident, had observed that for pecuniary damages and non-pecuniary damages compensation be awarded in view of 2nd Schedule of Motor Vehicle Act. The Apex Court had observed as under :-

1. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions.
2. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a

devastating effect on the family.

3. The injury inflicted by deprivation of the life of a child is extremely difficult to quantify.
4. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration.
5. In the instant case school record showed that children were good students – compensation of Rs. 75,000/- on account of non-pecuniary damages and an another sum of Rs.75,000/- for loss of future prospects.
6. Pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses.
7. Non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. Non-pecuniary compensation should not be fixed on basis of economic wealth and background – The loss of expectancy of life and pain and suffering on that account are common and uniform to all regardless of the status.
8. It is duty of court to award just compensation for non-pecuniary loss. However, it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount

as compensation keeping in view all relevant facts and circumstances into consideration.

9. In the instant case 29 children below the age of 18 years died in Bus accident – Non-pecuniary compensation of Rs.75,000/- granted in respect of each child.

Para Nos. 15 and 16 of judgment in ***R.K. Malik's case (Supra)*** are quite important and relevant for the purpose of deciding the present case and are reproduced as under :-

> "15. The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination it can be said that the parents, who are appellants herein, have not suffered any pecuniary loss. In fact, Loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in Taff Vale Rly. Co. v. Jenkins, (1911-13) All England Reporter 160 as follows:
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> > "In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will found a valid claim

provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived."

16. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grand parents etc. in the case of non-working student? Under the Second Schedule of the Act in case of a non earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to claim petitions filed under Section 163 A of the Act. The Second Schedule provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable under Section 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases. [see Abati Bezbaruah v. Dy. Director General, Geological Survey of India, (2003) 3 SCC 148); United India Insurance Company Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 and UP State Road Transport Corp. v. Trilok Chandra, (1996) 4 SCC 362]."

With regard to grant of non-pecuniary compensation, that aspect has been dealt in para no. 24 of the judgment, which is also being reproduced for ready reference :-

> "24. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life". This head of compensation

need not be restricted to a case where the injured person himself initiates action but is equally admissible if his dependant brings about the action."

Adverting to the case in hand, notional income of the deceased is to be taken as Rs.15,000/- per annum and multiplier of 15 is to be applied.

Accordingly, the amount so calculated comes out to Rs.15,000 x 15 = Rs.2,25,000/-.

On this amount, the appellants – claimants are entitled to get Rs.15,000/- as funeral expenses. In addition to that they claimants are found entitled to get Rs.60,000/- as non-pecuniary damages, on account of loss of love and affection, for having lost their infant son. Thus the total compensation payable to the claimants comes to Rs.2,25,000 + 15,000 + 60,000= Rs. 3,00,000/-.

The Tribunal has awarded a sum of Rs.1,00,000/- to the claimants as compensation.

In that way, the claimants are entitled to get additional compensation of Rs.3,00,000 – 1,00,000 = 2,00,000/-. The claimants-appellants shall be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization.

The interest @ 6% per annum granted by the Tribunal is also on lower side, which is enhanced to 7.5% per annum on the original amount. The apportionment, other terms and conditions shall remain the same as in the original award. In that way the cross objections are allowed partly.

(H.S. Madaan)
Judge

31.7.2019
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Whether speaking / reasoned Yes / No
Whether reportable Yes / Nos