IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-1377-2015(O&M)

Smt.Sumitra

...Appellant

Versus

Narender Singh and another

...Respondents

(2) FAO-1763-2015(O&M)

Rakesh

...Appellant

Versus

Narender Singh and another

...Respondents

Date of Decision:-14.5.2019

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

Present: Mr.Manoj Yadav, Advocate
for the appellants.

Mr.Lupil Gupta, Advocate
for respondent No.1 in both appeals.

Mr.Puneet Sharma, Advocate
for respondent No.2 in FAO-1377-2015.

Mr.R.C. Gupta, Advocate
for respondent No.2 in FAO-1763-2015.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-1377-2015 filed on behalf of appellant - Smt.Sumitra and FAO-1763-2015 filed on behalf of appellant – Rakesh, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 14.7.2012 at about 6:00/7:00 a.m., deceased Krishan Kumar along with several other persons was travelling in TATA-407 vehicle having registration No.HR-47-B-5107(hereinafter referred to as the offending canter) going from his village Pranpura to Haridwar; that the vehicle was being driven by respondent No.1 Narender Singh in a very rash and negligent manner at a high speed in a zig-zag manner; that the deceased and other passengers travelling in the vehicle had requested respondent No.1 – driver to drive it properly but to no effect; that when the vehicle had reached just ahead of Sultanpur-Laksar near Foji Dhaba on Delhi-Haridwar Road, it struck against an electricity pole, resultantly Krishan Kuamr sustained multiple injuries on his person and died at the spot; that postmortem examination on his dead body was conducted at General Hospital, Dehradun; that formal FIR No.223 dated 17.8.2012 for the offences under Sections 279/337/338/427/304-A IPC was registered against respondent No.1 – Narender Singh at Police Station Laksar, Haridwar. Other passengers also received injuries.

Petitioner Smt.Sumitra – mother of deceased Krishan Kumar had brought a claim petition bearing MACT Case No.16 of 2012/2013 against respondents i.e. Narender Singh – driver-cum-owner and New India Assurance Company Ltd. - insurer of the offending canter, claiming compensation to the tune of Rs.25 lacs on account of death of her son Krishan Kumar in a motor vehicular accident. As per the version of the claimant, deceased Krishan Kumar was aged about 19 years and he was enjoying good health; that he was a student of B.A. Final year and running a tuition centre, earning Rs.10,000/- per month and he was sole bread winner of his family.

Petitioner Mandeep had brought a claim petition bearing MACT Case No.17 of 2012/2013 and petitioner Rakesh had also brought a claim petition bearing MACT Case No.18 of 2012/2013 against the above-said respondents, claiming compensation to the tune of Rs.15 lacs and Rs.25 lacs, respectively on account of injuries suffered by them in the motor vehicular accident.

Since all the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Rewari.

After hearing arguments, the claim petitions were allowed partly by the Tribunal vide award dated 1.9.2014. Petitioner Smt.Sumitra, who had filed MACT Case No.16 of 2012/2013 was awarded compensation of Rs.6,44,000/-, petitioner Mandeep, who had filed MACT Case No.17 of 2012/2013 was awarded compensation of Rs.1,78,058/- and petitioner Rakesh, who had filed MACT Case No.18 of 2012/2013 was awarded compensation of Rs.3,57,721/- along with interest at the rate of 7% per annum from the date of filing of the petitions till final realization payable by respondent No.1. The insurance company was absolved of its liability to pay compensation observing that the offending vehicle was a goods vehicle and deceased Krishan Kumar along with injured Mandeep and Rakesh were travelling in it as gratuitous passengers, therefore respondent No.1 being owner and driver of the said vehicle was liable to pay the compensation.

Claimants Smt.Sumitra and Rakesh were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

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

As far as **FAO-1377-2015** filed by appellant/claimant Smt.Sumitra is concerned, in absence of any cogent and convincing evidence led by the claimant to prove avocation and income of the deceased Krishan Kumar as alleged by her, the Tribunal had taken him to be a unskilled labourer and his income was assessed to be Rs.5,500/- per month. I do not find anything wrong with such approach of the Tribunal.

However, no addition on account of future prospects has been made. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.5500 + 2200 = Rs.7,700/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the deceased was a bachelor and the claimants are the parents, deduction towards self-expenses is to be taken as 50%. In this case the Tribunal has correctly deducted 50% of the amount towards self expenses. Doing that the dependency of claimant comes out to Rs.3,850/- per month, annual dependency comes out to Rs.3,850 x 12 = Rs.46,200/-.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 46,200 x 18 = 8,31,600/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimant is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 8,31,600 + 30,000 = 8,61,600/-.

The Tribunal has awarded compensation of Rs.6,44,000/-.

In this way, the enhanced amount comes out to Rs.2,17,600/- (8,61,600 - 6,44,000). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.2,17,600 /-.

As far as **FAO-1763-2015** filed on behalf of appellant/claimant Rakesh Kumar is concerned, the Tribunal awarded compensation of Rs.3,57,721/- to the claimant Rakesh Kumar under different heads, which are as under:

(i)	On account of expenses for getting medical treatment which includes hospitalisation charges, expenses in purchasing medicines etc.	Rs.1,59,321/-
(ii)	On account of pain and suffering	Rs.20,000/-
(iii)	On account of special diet and transportation etc.	Rs.20,000/-
(iv)	On account of 6% disability	Rs.1,58,400/-

I find that compensation to the tune of Rs.1,58,400/- awarded on account of 6% disability is just and proper.

While granting compensation of Rs.1,59,321/- towards medical treatment which includes hospitalisation charges, expenses in purchasing medicines etc., the Tribunal has not taken into view the fact that many a times, the record of various amount spent on purchase of medicines etc. are not kept and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to Rs.2,00,000/- .

The Tribunal has awarded a sum of Rs.20,000/- on account of pain and suffering. In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I enhanced it to Rs.25,000/- under that head.

The Tribunal has awarded consolidated amount of Rs.20,000/- under the heads special diet and transportation etc. However, the amount deserves to be awarded in different heads.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. I award a sum of Rs.20,000/- under that head.

Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of Rs.20,000/- is awarded to him on account of transportation.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of Rs.20,000/- is accordingly awarded to the appellant/claimant on that score.

The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.30,000/- is awarded to him on account of loss of amenities and loss of expectation of life.

The total compensation comes out to Rs. 4,73,400/-.

The Tribunal has awarded compensation of Rs.3,57,721/-.

In this way, the enhanced amount comes out to Rs.1,15,679/- (4,73,400 - 3,57,721). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.1,15,679 /-.

As far as the liability to pay the amount of compensation in both the petitions is concerned, the Tribunal by misappraisal of evidence and wrong interpretation of law has come to the conclusion that insurance company was not liable to pay the compensation amount. Whereas insurance company should have been directed to satisfy the award, though granting it a right to recover the amount paid by it from the insured.

Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there.

Learned counsel for the appellants/claimants has referred to authority ***Manuara Khatun & Ors Versus Rajesh Kr. Singh & Ors, 2017 ACJ 1031*** by the Apex Court wherein while dealing with a claim petition under Sections 147 and 166 of the Motor Vehicles Act, 1988 when the accident had been caused due to negligence of driver of the vehicle, which was carrying gratuitous passenger, it was observed that Insurance Company is not liable to pay compensation to victims of accident, who were gratuitous passengers, though such insurance company was directed to pay compensation awarded to victims and recover the same from owner of vehicle in execution proceedings arising in that case. Learned counsel for the appellants/claimants has further referred to consolidated judgment delivered by High Court of Delhi in MAC APP.81 to 84, 87 and 90 of 2018. As per facts of the said case several persons along with respective goods were travelling in the offending truck to be transported to Gangotri, Uttrakhand from their village Baghanki, Manesar, District Gurugram, Haryana; they were carrying goods for the holding of *LANGAR* (free kitchen) by all of them; that on account of rash and negligent driving of the truck by its driver, the accident had taken place, consequently the truck along with goods had fallen into a ditch, resultantly all the occupants of the truck including driver had sustained fatal injuries. The legal representatives of the deceased persons travelling in the truck had brought claim petitions, which were allowed by MACT and compensation was granted to them. However, they had filed appeals being dissatisfied with the amount of compensation granted to them and those appeals came up for hearing before Delhi High Court. The question cropped up as to whether the deceased were gratuitous passengers and insurance company was liable to pay compensation. Relying upon the judgment ***Manuara Khatun & Ors Versus Rajesh Kr. Singh & Ors***(supra) by the Apex Court wherein it was declared that in case of gratuitous passengers, it is duty of the insurer to satisfy the award first, while invoking the principal of "pay and recover"; that principal was applied and insurance company was directed to pay the awarded compensation to claimants and thereafter, recover it from the owner of insured vehicle and since the driver of the vehicle had expired and no steps have been taken to bring on record his legal representatives.

Learned counsel for the appellants has further stated that Special Leave Petition filed against the judgment passed the Delhi High Court had since been dismissed. He has referred to order dated 25.10.2018 by the Apex Court in that regard.

On the other hand, learned counsel for the Insurance company has referred to authority ***National Insurance Co. Ltd. Versus V. Chinnamma and others, 2005(1) PLR 98*** by the Apex Court as well as ***National Insurance Company Limited Versus Prema Devi and others, 2008(5) SCC 403*** by the Apex Court.

However, I find that authorities referred to by learned counsel for the appellants/claimants find application to the facts of the present case, whereas it is not so with respect to the authorities referred to by learned counsel for the insurance company.

With regard to the judgment ***National Insurance Co. Ltd.***

Versus V. Chinnamma and others (supra) it had different facts when death of a person travelling in a tractor trolley had taken place and it was observed that the passenger was travelling in a tractor-trailer along with his good and insurance company was not liable. In the present case also, the insurance company is not being saddled with any pecuniary liability. Though it is required to pay compensation amount to claimants and then recover it from owner of the insured vehicle. The other authority ***National Insurance Company Limited Versus Prema Devi and others*** (supra) is earlier in time and had somewhat different facts from the facts of the present case.

In view of the above discussion, all the claimants shall be entitled to recover compensation awarded in both the petitions from all or any of the respondents. However, recovery rights are given to the insurance company to recover the same from respondent No.1.

With such modifications, both the appeals are allowed partly.

14.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No