In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:4.4.2019

FAO No. 3340 of 2014(O&M)

Shriram General Insurance Company Limited

---Appellant

vs.

Bimla Devi and others

---Respondents

FAO No. 3341 of 2014(O&M)

Shriram General Insurance Company Limited

---Appellant

vs.

Smt. Somwati and others

---Respondents

FAO No. 3342 of 2014(O&M)

Shriram General Insurance Company Limited

---Appellant

vs.

Jhabar Singh and others

---Respondents

FAO No. 3343 of 2014(O&M)

Shriram General Insurance Company Limited

---Appellant

vs.

Balwant Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

***

Present: Mr. J.S.Chatrath, Advocate
Ms. Priya Deep, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant-insurance company

Mr. Balwinder Singh, Advocate
for respondents-claimants in FAO-3341 of 2014

***

Rekha Mittal, J.

This order will dispose of FAO Nos. 3340 to 3343 of 2014 as these have emerged out of the same award dated 23.12.2013 passed by the Motor Accidents Claims Tribunal, Narnaul (in short "the Tribunal") whereby compensation has been assessed on account of death of Hoshiyar Singh, Sunder Lal @ Surender, injuries sustained by Jhabar Singh and damage to Bolero car bearing No. HR-35-E-2070 in which the deceased and injured were travelling on the fateful day of 26.5.2010.

Counsel for the insurance company would inform that the appeals have been filed to assail findings of the Tribunal on issue No. 1 as well as quantum of compensation assessed in respect of death of Hoshiyar Singh, Sunder Lal @ Surender, injuries sustained by Jhabar Singh and damage to Bolero car bearing No. HR-35-E-2070.

Counsel for the insurance company would argue that the present is a case of contributory negligence of drivers of both the vehicles involved in the occurrence and as such claimants Smt. Somwati and others in respect of death of Sunder Lal @ Surender shall not be entitle to compensation to the extent of negligence attributable to deceased Sunder Lal @ Surender. To bring home his contention, he has referred to testimony of Jhabar Singh PW4, one of the injured in the accident in question. It is argued that Jhabar Singh in his cross examination has stated to the following effect:-

> "We had proceeded from Bhilwara (Haryana) at about 2 AM. Offending vehicle was TATA 407 bearing registration No. RJ-18-GA-2381 came from opposite direction. The accident took place on the pucca road which is having a substantial width. Two vehicles can easily pass at same time. It was a head on collision. I cannot say which portion of our vehicle was struck with which portion of offending vehicle. Speed of our vehicle was about 40-50 KPH. It is incorrect to suggest that our vehicle was going on at a very high speed and in rash and negligent manner.'

It is vehemently argued that keeping in view the width of the road at the site of accident that two vehicles can pass simultaneously coupled with that the accident was a head on collision, it can safely be held that driver of Bolero car namely Sunder Lal @ Surender can also be attributed negligence for the occurrence in question. It is further argued that in the given facts and circumstances, 50% negligence is liable to be attributed to Sunder Lal @ Surender and accordingly the insurance company shall not be liable to pay compensation to the extent of negligence attributable to Sunder Lal @ Surender and shall be entitle to recover compensation to that extent in other cases from the owner and insurer, if any, of the aforesaid Bolero car.

Counsel representing the claimants-respondents, on the contrary, has supported findings of the Tribunal on issue No. 1 whereby driver of Tata 407 has been held to be exclusively liable for the occurrence in which occupants of Bolero car sustained injuries that proved fatal for Sunder Lal @ Surender and Hoshiyar Singh.

Jhabar Singh, one of the injured and whose presence at the spot cannot be doubted, tendered into evidence his affidavit Ex. PW4/A by way of examination in chief. In para 1 of the affidavit, he has narrated as to how the occurrence in question took place. A relevant extract from para 1 of his affidavit, reads thus:-

> "That on the ill-fated day of 26.5.2010, deponent alongwith Deep Chand son of Sheotaj Singh, R/o village Bhilwara, P.S.Ateli Mandi and Surender S/o Balwant, R/o Bhilwara and Hoshiar Singh S/o Sultan Singh, R/o village Prithvipura were going towards Chandigarh from Mohindergarh on vehicle Bollero bearing Regd. No. HR-35E-2070, which was being driven by its driver Surender at a very moderate speed by observing all the traffic rules on the left side of the road and when at about 4:15 a.m., their vehicle reached near Rajwahe on Kherki Mor-Kalanaur Road, in the area of P.S.Kalanaur, a Tata 407 bearing Regd. No. RJ-18-GA-2381, in which vegetables were loaded, had come from opposite direction i.e. from front, which was being driven by its driver, respondent No. 1, at a very high speed and in a rash and negligent and zig-zag

manner. The aforesaid vehicle had hit the Bollero from side by coming in wrong direction and due to the impact of hit, deponent and Surender & Hoshiar Singh have sustained multiple, grievous and serious, fatal injuries on various parts of their bodies and Surneder & Hoshiar Singh have died due to the injuries sustained by them in the accident and deponent was shifted to PGIMS Hospital, Rohtak from accident site."

Perusal of cross examination of Jhabar Singh would reveal that there is no challenge to his testimony that the offending vehicle Tata 407 hit Bolero by coming in wrong direction. In the given circumstance, even if it is accepted that the accident in question was a head on collision between the two vehicles involved in the occurrence, negligence in causing the accident cannot be attributed to Sunder Lal @ Surender. This apart, as has been rightly noticed by the Tribunal, driver of the offending vehicle did not appear in the witness box to counter testimony of Jhabar Singh or to say something about his indictment in criminal proceedings on the basis of FIR No. 118 dated 26.5.2010 lodged against him at the behest of Deep Chand, one of the witnesses examined in the present case. An adverse inference is liable to be drawn against the respondents for failure to examine driver of offending vehicle without any tangible explanation. This apart, on due investigation of FIR aforesaid registered with regard to the occurrence, Girdhari Lal Saini, respondent No. 1 before the Tribunal and driver of offending vehicle was put to trial. In this view of the matter, I find myself unable to accept contention of the insurance company that the present is a case of contributory negligence of both the vehicles and the insurance company is not liable to pay compensation to legal representatives of deceased Sunder Lal @ Surender to the extent of negligence attributable to him. As such, findings of the Tribunal on issue No. 1 are liable to be affirmed and ordered accordingly.

With regard to death of Hoshiyar Singh, the Tribunal has awarded Rs. 23,88,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.17000/-
Addition in income for future prospects	30%
Deduction for personal expenses	1/3rd
Multiplier	13
Loss of dependency	Rs. 22,88,000/-
Loss of consortium	Rs. 50,000/-
Loss of estate	Rs. 25,000/-
Funeral expenses	Rs. 25,000/-

Counsel for the insurance company would argue that as the deceased was an employee of Haryana Government, family of the deceased is entitle to compassionate assistance under the Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006 (in short "2006 Rules") and accordingly, the amount available to family of the deceased is amenable to deduction in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Company Limited vs. Shashi Sharma and others 2016 (4) RCR (Civil) 569.** Another submission made by counsel is that compensation allowed under conventional heads needs to be restricted to Rs. 70,000/-.

Dayanand, Accountant, BDPO, Ateli Nangal was examined to prove that the deceased was working as Village Secretary at salary of Rs. 17,224/- per month. He proved the salary certificate Ex. PW3/A. In his cross examination, he has stated that as per government rules, Bimla Devi is getting full pay except HRA and Cycle allowance. Hoshiyar Singh was born on 8.8.1960 and he was slightly less than 50 years of age. Rule 5 of the 2006 Rules says that family of the employee would continue to receive as financial assistance a sum equal to pay and other allowance that was last drawn by the deceased employee for a period of seven years or till the date the employee would have retired from government service on attaining the age of superannuation, whichever is earlier, if the employee had attained the age of 48 years. Since in the case at hand, the deceased had already attained age of 49 years, financial assistance would be available to family of the deceased for seven years.

The Tribunal has computed loss of dependency by treating salary of the deceased at Rs. 17,000/- in place of Rs. 17,224/- per month. The Tribunal has rightly applied addition in income for future prospects at the rate of 30%, deduction for personal expenses to the extent of 1/3rd and multiplier of 13. Accordingly, loss of dependency is calculated at Rs. 23,28,685/- [17224 x 12 x 13 =26,86,944 + 8,06,083(30%)=34,93,027 -11,64,342(1/3rd)]

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034,** detailed hereunder:-

Loss of consortium	Rs. 40,000/-

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

Coming to the deduction qua financial assistance available to family of the deceased, as per statement of Dayanand PW3, family of the deceased would be entitle to full pay except HRA and cycle allowance. After deducting the amount of HRA and Cycle allowance, salary of the deceased comes to Rs. 16052/- and his salary for a period of seven years is calculated at Rs. 16052 x 12 x 7 = 13,48,368/-. In view of the judgment of this court **Kamla Devi and others vs. Sahib Singh and others FAO No. 3064 of 2013 decided on 30.11.2017** affirmed by Hon'ble the Supreme Court, only 50% of the amount is amenable to deduction.

To be fair to the appellant-insurance company, counsel has sought to raise a plea that as the deceased has not completed service of 20 years, pension payable, in absence of compassionate assistance, would be less than 50%. However, there is no such evidence produced on record nor reference has been made to any such rule. In this view of the matter, contention raised by counsel with regard to extent of pension is not tenable. After deducting 50% of the amount, net compensation payable to the claimants would be Rs.23,98,685 – 6,74,184=17,24,501/-.

Compensation assessed by the Tribunal is reduced to the extent of Rs. 6,63,499/-(23,88,000-17,24,501). The insurance company is at liberty to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

With regard to death of Sunder Lal @ Surender, the Tribunal has awarded Rs. 15,21,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Addition in income for future prospects	50%
Deduction for personal expenses	1/3rd
Multiplier	18
Loss of dependency	Rs. 12,96,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of care and guidance	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-

Counsel for the insurance company would argue that addition in income for future prospects is liable to be restricted to 40% and conventional heads to the extent of 70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra)** and **Sebastiani Lakra and others' case (supra).**

The plea of claimants is that deceased was working as a driver and earning Rs. 10,000/- per month. In addition, he was earning Rs. 10,000/- from agriculture. The claimants failed to adduce any evidence with regard to income of the deceased from agriculture. However, the deceased was driving the ill fated vehicle at the time of occurrence and his licence to drive a light motor vehicle was produced on record and as such, the deceased was a skilled worker. Taking clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased assessed by the Tribunal needs affirmation. The claimants shall be entitle to increase in income for future prospects @ 40%. The application for compensation has been filed by the widow, minor child and parents of the deceased. There is nothing on record suggestive of the fact that father of the deceased is dependent upon earning of the deceased. The Tribunal has rightly applied 1/3rd cut for personal and living expenses. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs. 12,09,600/- [6000 x 12 x 18= 12,96,000 + 5,18,400 (40%) = 18,14,400 – 6,04,800 (1/3rd)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/-, detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 12,79,600/- and compensation assessed by the Tribunal is reduced to the extent of Rs. 2,41,400/- (15,21,000-12,79,600). The insurance company is at liberty to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

With regard to injuries to Jhabar and damage to Bolero, counsel for the insurance company has not made any submissions. Accordingly, the appeals in this regard are dismissed.

For the foregoing reasons, FAO Nos. 3340 and 3341 of 2014 are partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

4.4.2019
paramjit

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