IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-246-CII of 2015 (O&M) in/and
FAO No.4724 of 2013 (O&M)
Date of decision: 11.02.2019

Rajesh Kumar ... Appellant

Versus

National Insurance Company Ltd. and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Dheeraj Narula, Advocate for the appellant.

Mr. DK Dogra, Advocate for the insurance company.

Mr. RS Gill, Advocate for respondent No.2.

Mr. Gourav Jain, Advocate for the claimants/cross objectors.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.4724 of 2013 and cross objections No.246-CII of 2015 as these have emerged out of award dated 09.05.2013 passed by the Motor Accidents Claims Tribunal, Sirsa whereby compensation has been assessed on account of death of Pushpa Rani in a motor vehicular accident that took place on 27.03.2010.

FAO No.4724 of 2013 has been filed by Rajesh Kumar transferee/owner of offending vehicle i.e motorcycle No.HR-08-E/8299 whereas the cross objections have been filed by the claimants seeking enhancement of compensation. For facility of reference, Rajesh Kumar would be referred to as the appellant, cross objectors as claimants, National Insurance Co. Ltd. as company and Mahavir Bagri as the registered owner.

CM No.23192-CII of 2015 in XOBJC-246-CII of 2015

Prayer in this application is for condonation of delay of 122 days in filing the cross objections.

In view of averments made in the application supported by an affidavit of Sh. Sandeep, one of the claimants coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 122 days in filing the cross objections is condoned subject to the condition that the claimants shall forgo interest for the period of delay, in case compensation is enhanced.

CM No.19920-CII of 2013 in FAO No.4724 of 2013

Heard.

Allowed as prayed for. Delay of 09 days in filing the appeal stands condoned.

XOBJC-246-CII of 2015 in/and FAO No.4724 of 2013

Counsel for the appellant would argue that as the offending vehicle stood registered in the name of Mahavir Bagri on the day of occurrence i.e. 27.03.2010, respondent No.2-A therein has wrongly been exonerated of liability to pay compensation.

Another submission made by counsel is that the Tribunal has wrongly allowed right of recovery in favour of the insurance company for want of driving licence with Sandeep @ Lalia, driver of motorcycle aforesaid. It is further argued that Sandeep was ex parte before the Tribunal and there is nothing on record suggestive of the fact that insurance company called upon Sandeep to produce the licence in compliance with the provisions of Section 134(c) of the Motor Vehicles Act, 1988 (in short 'the Act'). In support of his contention, he has relied upon judgment of this Court **Jagmohan Singh Vs. Dev Raj Saini, 2014(12) RCR (Civil) 1880.**

Counsel representing registered owner of the vehicle, on the contrary, has supported findings of the Tribunal exonerating Mahavir Bagri from liability to pay compensation as the vehicle in question stood sold by Mahavir Bagri in favour of appellant-Rajesh Kumar in the year 2009 long before the occurrence in question and affidavits executed by the registered owner and transferee of the vehicle were produced on record. It is further argued that even during pendency of the proceedings before the Tribunal, registration was changed in the name of appellant Rajesh Kumar. The application for taking the vehicle on sapurdari was filed by Rajesh Kumar and even revision petition against dismissal of his application was filed by him.

Counsel representing the insurance company has supported findings of the Tribunal giving right of recovery by relying upon judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425,** wherein it has been held that the insurance company is entitle to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

Counsel representing the claimants pray for enhancement of compensation on the premise that value of services of the deceased is on lower side and no deduction is to be made in respect of personal expenses and compensation allowed under conventional heads is inadequate.

Counsel representing the respondents in the cross objections have supported assessment made by the Tribunal.

Indisputedly, on the day of occurrence, the vehicle stood registered in the name of Mahavir Bagri respondent No.2. When the case is examined in the light of latest judgment of Hon'ble the Supreme Court **Naveen Kumar Vs Vijay Kumar and Ors, 2018(2) Scale 263** wherein Hon'ble the Supreme Court, on a detailed consideration of earlier judgments of the Court and definition of owner in Section 2(30) of the Act, has held that the registered owner is liable to compensate the claimant, therefore, contention raised by counsel for the appellant is meritorious and that of the registered owner is not tenable. As a natural corollary, respondents No.1 to 3 (1, 2, 2A and 3) before the Tribunal shall be liable to pay compensation to the claimants. In this context, reference can also be made to judgment of Hon'ble the Supreme Court **P.P. Mohammed Vs. K. Rajappan and others, 2008(17) SCC 624.**

This brings the Court to right of recovery given to the insurance company. The registered owner as well as transferee of the vehicle contested proceedings before the Tribunal but failed to produce licence, if any, possessed by Sandeep @ Lalia driver of the vehicle in question. The Tribunal, in para 32 of the award, has noticed contention of the insurance company that respondent No.1 therein was a minor and did not have driving licence. He also pointed out towards content of FIR Ex.P1 wherein it is mentioned that driver was less than 15 years of age. As driving licence of Sandeep @ Lalia was not produced by respondents No.2 and 2A therein, in discharge of their primary obligation to prove that vehicle was driven by a duly licensed person, insurance company has rightly been given right of recovery after payment of compensation to the claimants. That being so, no error much less illegality can be noticed in findings of the Tribunal allowing right of recovery in favour of the insurance company that would be available against respondents No.2 and 2A before the Tribunal.

Coming to quantum of compensation assessed by the Tribunal, the Tribunal has awarded Rs.3,65,200/-, detailed hereunder:-

1. Monthly value of services of the deceased	Rs.3300/-
2. Multiplier	13
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.3,43,200/-
5. Expenses on funeral	Rs.2000/-
6. Loss of consortium	Rs.20,000/-

The application for compensation has been filed by the husband, two sons and daughter of the deceased. Taking a clue from the minimum wage available at the relevant time coupled with that a housemaker has multifarious duties to perform, value of services of the deceased is assessed at Rs.5000/- per month. There would be no deduction for personal expenses in the light of Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730**. The multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,80,000/- (5000 x 12 x 13).

Under conventional heads, claimants shall be entitle to Rs.55,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of consortium	Rs.40,000/-

Total compensation is Rs.8,35,000/- and the additional amount is Rs.4,69,800/- (8,35,000 - 3,65,200), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 122 days in filing the cross objections, to be shared by the claimants, in terms of the award.

In view of what has been discussed hereinbefore, the appeal and cross objections are partly allowed in the aforesaid terms.

11.02.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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