IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.4963 of 2014 (O&M)
Date of Decision: 04.02.2019

New India Assurance Company Limited ......Appellant.

Versus

Meena Devi and others ...... Respondents.

AND

F.A.O. No.946 of 2015(O&M)

Meena Devi and others ......Appellants.

Versus

Krishan Lal and others ...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Anamika Mehra, Advocate
for the appellant (in FAO No. 4963 of 2014) and
for respondent no.3 (in FAO No. 946 of 2015).

Mr. Sudhir Rana, Advocate
for the appellants (in FAO No. 946 of 2015) and
for respondents No. 1 to 5 in FAO No. 4963 of 2014.

Mr. Chirag Wadhwa, Advocate
for respondents no.1 and 2 (in FAO No. 946 of 2015 and for respondents no.6 and 7 (in FAO No. 4963 of 2014)

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LISA GILL, J.

This judgement shall dispose of FAO No. 4963 of 2014 and FAO No. 946 of 2015 as both these appeals arise from a common award dated 31.03.2014, passed by the learned Motor Accident Claims Tribunal, Karnal (for short 'tribunal').

FAO No. 4963 of 2014 has been filed by the appellant-Insurance Company, challenging its liability to pay the compensation.

Appellant-claimants in FAO No. 946 of 2015, who are the widow, parents and children of the deceased seek enhancement of the compensation awarded by the learned tribunal on account of death of Surinder Singh in the motor vehicle accident which took place on 06.10.2012. For the sake of convenience, facts are being extracted from FAO No. 4963 of 2014.

As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Surinder Singh was going from his village Kutail to the side of G.T. Road on his motorcycle (Bajaj Platina) bearing registration no. HR-05V-6743, on 06.10.2012. while observing all the traffic rules. At about 9.15.p.m., when he reached near Annupurna Rice Mills, a tractor trailer bearing registration no. HR-06-X-7334 being driven by respondent no.1, came from the opposite side in a rash and negligent manner. Surinder Singh (deceased) slowed down the speed of the motorcycle on seeing the tractor, but the offending tractor trailer struck against the motorcycle of Surinder Singh by coming on the wrong side of the road. As a result thereof, Surinder Singh received fatal injuries and died at the spot. FIR No.351 dated 06.10.2012, under Sections 279, 304-A IPC was registered at Police Station Madhuban, against respondent-Krishan Lal, in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent-Krishan Lal. Said finding of the learned tribunal has not been assailed by the Insurance Company in its appeal.

Income of the deceased was assessed as ₹7500/- per month. Increment of 50% was afforded on account of future prospects. 1/4th deduction was effected. Multiplier of 16 was applied by the learned tribunal. Loss of dependency was assessed as ₹10,80,000/-. A sum of ₹5,000/- was awarded on account of transportation and last rites expenses besides a sum of ₹10,000/- was awarded on account of loss of consortium. Learned tribunal awarded a sum of ₹10,95,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the amount to the claimants.

Learned counsel for the appellant-Insurance Company (in FAO No. 4693 of 2014) argues that the offending vehicle was a tractor trolley. Therefore, the driving license of its driver namely Krishan Lal was not valid inasmuch as he was authorized to drive LMV-NT-Car and Tractor only, whereas the tractor with a trolley attached thereto would fall in the category of a transport vehicle. Therefore, an endorsement to this effect was necessary on his license. The insurance company should have at-least be afforded the right to recover the amount of compensation from the owner and the driver. No other argument has been raised. It is prayed that the appeal filed by the Insurance Company be allowed and the insurance company be afforded the right to recover the compensation from the owner and driver of the offending vehicle.

Learned counsel for the owner and driver of the vehicle, refutes the said averments while submitting that the tractor trolley was not being used for commercial purposes and neither is it proved on record that an endorsement on the driving license is required, as argued by learned counsel for the insurance company. It cannot be said that the driver of the offending vehicle did not hold a valid driving license, Mark-A.

Learned counsel for the appellant-claimants submits that income of the deceased has been wrongly assessed as ₹5000/- per month, whereas the deceased was an agriculturist and engaged in dairy farming as well. While fairly stating that increment on account of future prospects should be 40%, it is submitted that meagre compensation has been awarded under the conventional heads. It is, thus, prayed that compensation awarded to the appellants be enhanced in terms of the judgements of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009** and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, 2018(4) R.C.R (Civil) 333.**

I have perused the files and heard learned counsel for the parties.

<u>FAO No. 4963 of 2014.</u>

Insofar as the argument addressed by learned counsel for the appellant-Insurance Company is concerned, it is a settled position that merely because a trailer is attached with the tractor, the said vehicle does not fall into the category of a transport vehicle. There is indeed no evidence on record to indicate that the tractor trailer was being used for commercial purposes. In this respect, reference can gainfully be made to the judgment of the Hon'ble Supreme Court in **Fahim Ahmad and others Vs. United India Insurance Co. Ltd., and others 2014 (1) R.C.R. (Civil) 470** and judgment of this Court in **Jaidev and others Vs. M/s Bajaj Allianz General Insurance Company and another 2016 (2) PLR 43.** As per the driving license of the driver of the offending vehicle, Mark-A, it is clearly mentioned that the driving license is valid up to 25.05.2019 and the driver was authorized to drive the vehicles of the following descriptions:-

1. MC with gear,
2. LMV-NT-Car
3. Tractor only

In this view of the matter, there is no merit in the contention raised by learned counsel for the appellant-Insurance Company and the same is accordingly rejected.

There is no merit in the appeal filed by the appellant-Insurance Company.

<u>FAO No. 946 of 2015.</u>

Though, the claimants have averred that the deceased was an agriculturist engaged in dairy farming as well, there is admittedly no evidence to this effect. Evidence on record also does not indicate the income earned by the deceased. In this situation, learned tribunal has rightly assessed the income of the deceased as ₹5000/- per month.

There is no dispute regarding the death of Surinder Singh in a motor vehicle accident which took place on 06.10.2012 due to rash and negligent driving of canter by its driver-respondent-Krishan Lal. Deceased was admittedly 34 years old at the time of accident. Therefore, increment of 40% instead of 50% is to be afforded in terms of judgment of the Hon'ble Supreme Court in **Pranay Sethi's** case (Supra). Multiplier of 16 is correctly applied by the learned tribunal. Deduction of ¼ has also been correctly effected by the learned tribunal.

In terms of the judgement of Hon'ble Supreme Court in **Magma General Insurance Company Limited** case **(Supra)**, claimants no.1 to 5 are entitled to a total sum of ₹2,00,000/- for loss of consortium (spousal, filial and parental). Compensation towards the claimant on account of death of Surinder Singh, is thus re-worked as under:-

1.	Total income of deceased	₹5000/- p.m
2.	Deduction of 1/4 on account of personal expenses	₹5000/– (₹5000*1/4=₹1250/-) = ₹3750/-
3.	Total income after addition of future prospects at the rate of 40%	₹3750/- (₹3750/-+ ₹1500/-) i.e. ₹5250/-
4.	Annual dependency after applying multiplier of 16	₹6300/- x 12 x 18= ₹10,08,000/-
5.	Funeral expenses	₹15,000/-
6.	Loss of estate	₹15,000/-
7.	Spousal, filial and parental consortium to claimants no.1 to 5 @ ₹40,000/- each	₹2,00,000/-
	Total Compensation =	**₹12,38,000/-**

Claimants shall be entitled to interest on the enhanced compensation amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall stand deducted. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants, shall enure.

With the abovesaid modification in the amount of compensation, present appeal i.e. FAO No. 946 of 2015, is disposed of and FAO No. 4963 of 2014 filed by the appellant-Insurance Company is dismissed.

[LISA GILL]
Judge

04.02.2019
s.khan

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