IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 15.03.2019

FAO 3526 of 2015 (O&M)

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

Versus

Indraj Singh and others ....*Respondents*

FAO 4407 of 2015 (O&M)

Indraj Singh and another ....*Appellants*

Versus

Rohit Kumar and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R K Bashamboo, Advocate
for the insurance company

Mr. Ram Bilas Gupta, Advocate
for the claimants

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Rekha Mittal, J.

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 06.02.2015 passed by the Motor Accidents Claims Tribunal, Faridabad (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Sandeep Kumar son of the claimants, in a motor vehicular accident that took place on 04.11.2013.

FAO No. 3526 of 2015 has been filed by New India Assurance Company Limited (hereinafter referred to as 'the insurance company') whereas other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been preferred to challenge liability of the insurer to pay compensation as the deceased was a gratuitous passenger in offending Car bearing No. DL-9C-QS-9130, driven by Rohit Kumar, its driver.

FAO No. 3526 of 2015

The sole submission made by counsel for the appellant insurance company is that insurance policy obtained by Kailash Kumar, owner of offending vehicle is an 'Act Policy' and as such, risk of injury or death of a gratuitous passenger is not covered under the policy and accordingly, the insurance company cannot be fastened with liability to pay compensation.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal holding that respondent No. 3 (therein) is duty bound to indemnify insured and liable to pay compensation. It is further argued that the insurance company did not raise a plea before the Tribunal that the deceased was a gratuitous passenger in the offending vehicle, therefore, the insurance company cannot be allowed to raise a factual dispute for the first time in appeal.

The registered owner of the vehicle namely Kailash Kumar was served through substituted service but failed to cause appearance and as such, there is no contest to appeal filed by the insurance company by registered owner of the vehicle.

Indisputably, Sandeep Kumar along with Rohit Kumar was travelling in the offending vehicle on the fateful day of 04.11.2013. As per plea of the claimants, when they reached at Sector 2, Faridabad, Wagon R turned turtle and Sandeep Kumar sustained head injuries and died on the spot. The insurance company raised a specific plea that the deceased was a gratuitous passenger in Car in question. Kailash Kumar, registered owner of the vehicle did not contest the proceedings before the Tribunal and was proceeded against ex parte. There is no challenge to plea of the insurance company that Sandeep Kumar was travelling in the vehicle in the capacity of a gratuitous passenger.

Perusal of policy placed on record by filing an application for additional evidence makes it evident that the policy is private car liability policy obtained on payment of TP premium of Rs.975/- with service tax of Rs.121/-. As the deceased was a gratuitous passenger in Car insured with the insurance company only in respect of third party liability, in compliance with the provisions of Section 147 of the Motor Vehicles Act (in short, 'the Act'), the insurance company cannot be fastened with liability to pay compensation. In this context, reference can be made to judgment of Hon'ble the Supreme Court ***National Insurance Company Limited vs. Balakrishnan and another, 2013 (1) R.C.R. (civil) 762.***

As the insurance company cannot be fastened with liability to pay compensation, findings of the Tribunal holding the insurance company liable to pay compensation by way of indemnification of the insured are set aside.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeal is allowed and the insurance company shall not be liable to pay compensation to the claimants and they shall be entitle to recover compensation from the driver and owner of the offending vehicle.

FAO No. 4407 of 2015

The claimants are in appeal seeking enhancement of compensation on account of death of Sandeep Kumar in a motor vehicular accident that took place on 04.11.2013.

The Tribunal has awarded Rs.5,10,000/- on the basis of findings qua issue No. 2, relating to assessment of compensation.

The claimants have filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure seeking permission to produce additional evidence i.e. documents Annexures A1 to A9, with regard to educational qualification of the deceased and the deceased having joined merchant Navy Marine as Engine Oiler in M/s Simatech Shipping and Forwarding LLC, Colombo, Sri Lanka. Counsel for the claimants would urge that the matter may be remitted to the Tribunal for assessment of compensation afresh on the basis of materials already on record and additional evidence to be adduced by the claimants, in terms of application for additional evidence filed in appeal.

There is no representation on behalf of respondent No. 1 who was earlier being represented by a counsel. Service of respondent No. 2 was dispensed with as he was ex parte before the Tribunal. However, respondent No. 2 (respondent No. 4 in FAO No. 3526 of 2015) was served through substituted service in the connected appeal but failed to cause appearance. In view of findings of this Court in FAO No. 3526 of 2015, the insurance company has been exonerated of liability to pay compensation and as such, there is no contest to plea of the claimants for assessment of compensation afresh.

Taking into consideration that provisions of the Motor Vehicles Act, providing for compensation are benevolent social legislation enacted with an avowed object to assess just and reasonable compensation to make good loss the victim family has suffered, plea of the appellants for adducing additional evidence to prove documents Annexures A1 to A9 is allowed. That being so, the matter needs remittance to the Tribunal for making assessment of compensation afresh on the basis of materials already on record and additional evidence to be adduced by the claimants and rebuttal evidence, if any, to be led by owner and driver of offending vehicle. Accordingly, findings of the Tribunal on issue No. 2 are set aside with the aforesaid observations.

For the foregoing reasons, the appeal stands disposed of. Findings of the Tribunal on issue No. 2 with regard to assessment of compensation are set aside. The matter is remitted to the Tribunal for assessment of compensation afresh after notice to the driver and owner of the offending vehicle.

The appellants/claimants through their counsel are directed to appear before the Tribunal on 12.04.2019.

(Rekha Mittal)
Judge

15.03.2019
Mohan Bimbra

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