IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1 **FAO-5929-2013(O&M)**
Date of Decision : October 03, 2019

Kanika Mittal and others

.....Appellants

VERSUS

Labh Singh and others

.....Respondents

2 **FAO-3429-2013(O&M)**

ICICI Lombard General Insurance Company Ltd.

.....Appellant

VERSUS

Kanika Mittal and others

.....Respondents

3 **FAO-3430-2013(O&M)**

ICICI Lombard General Insurance Co. Ltd.

.....Appellant

VERSUS

Rekha Mittal and others

.....Respondents

4 **FAO-8788-2014(O&M)**

Rekha Mittal and others

.....Appellants

VERSUS

Labh Singh and others

.....Respondents

5 **FAO-137-2014(O&M)**

Labh Singh and another

.....Appellants

VERSUS

Rekha Mittal and others

.....Respondents

6 **FAO-138-2014**

Labh Singh and another

.....Appellants

VERSUS

Rekha Mittal and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Ms. Ekta Thakur, Advocate
for the appellant in FAOs-5929-2013 and 8788-2014
and for respondents No.1 to 3 in FAO-3429-2013.

Mr. Subhash Goyal, Advocate
for the appellant in FAOs-3429-3430-2013 and
for respondent No.3 in FAOs-8788 of 2014 & 5929 of 2013.

Mr. Harminderjeet Singh, Advocate
for the appellant in FAOs-137 and 138 of 2014.

<u>NIRMALJIT KAUR, J. (Oral)</u>

All the aforementioned appeals shall stand decided by this common order.

FAO-5929-2013

The appeal i.e. FAO-5929-2013 is filed by the claimants and legal heirs of the deceased-Shubham Mittal for enhancement qua assessment of the income on the ground that the deceased was 21 years of age and Law student and the income assessed by the Tribunal is on the lower side.

However, there is merit in the argument of learned counsel for the claimants that the deceased was admittedly a student of Law and, therefore, the income assessed as Rs.6,000/- was on the lower side. He under no circumstances can be equated with a labourer. Reliance is placed on the judgment rendered in the case of **Ashwani Kumar Bhandari** **Vs**. **Darshna and others**, *2010(4) PLR 99* wherein the learned Single Bench upheld the amount of Rs.10,000/- where the deceased was a student of Law and the accident had taken place in the year 2000. In the present case, the accident is of the year 2010. Agreeing with the same, the income of the deceased deserves to be enhanced from Rs. 6,000/- per month to Rs.10,000/- per month.

Accordingly, the appellants-claimants in appeal No.5929-2013 are entitled to the enhancement as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	Rs.10000/- p.m. x 12 = Rs.1,20,000/-

Sr. No.	Head	Amount assessed
2	Future prospects @ 40%	1,20,000 x 40 = 48,000 1,20,000+48,000 = 1,68,000
3	Deduction 50%	1,68,000x50% = 84,000
4	Multiplier	84,000 x 18 = Rs.15,12,000/-
5	Conventional Heads	Rs.10,000/-
6	Total	Rs.15,22,000/-
7	Compensation awarded by the Tribunal	Rs.11,33,200/-
8	Differences	Rs.3,88,800/-

Accordingly, the present appeal is allowed to the said extent. The enhanced amount of Rs.3,88,800/- be deposited within two months from the receipt of certified copy of this order alongwith the interest already awarded by the Tribunal from the date of the claim petition till its realization.

However, in case the same is not deposited within two months, the same shall thereafter be deposited alongwith interest @ 12% till payment after the expiry of two months.

FAO-3429-2013

The appeal i.e. FAO-3429-2013 is filed by the Insurance Company against the impugned award dated 4.4.2013 on the ground that the deceased in the present case was 21 years of age and was unmarried. The deduction of 1/3rd cannot be applied whereas it should be 50% on account of the contributory negligence. Further, the car was being driven by the father, who also died in the said accident. It was being driven negligently as due to the late night driving, the driver of the car could not see the dead bullock lying on the road and to avoid the accident, he turned the car towards the extreme right side and struck against the bus which was coming on its correct side.

Learned counsel for the appellants does not dispute that the deduction should have been 50% instead of 1/3rd but disputes that the driver of the car was negligent. It is stated that no evidence was led by the appellant-Insurance Company to prove the same. Rather, the claimants produced an eye witness. He was examined at length. The appellant-Insurance Company in FAO-3429-2013 was not able to break the evidence of the eye witness which may help to conclude that the driver of the car was in any manner negligent. Further, it is the right of the claimants to choose the vehicle against which they want to claim in view of the settled proposition of law as laid down by the Hon'ble Apex Court in **Khenyei Vs. New India Assurance Co. Ltd. & Ors**. *2015(4) MLJ 364*. In para No.18 (ii) of the said judgment, it was held as under:-

> "In the case of composite negligence, apportionment of compensation between two tort feasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them."

Hence, the deduction made by the Tribunal towards 50% of contributory negligence is set-aside to the said extent.

Accordingly, the appeal i.e. FAO-3429-2013 filed by the appellant-Insurance Company deserves to be dismissed being devoid of merit.

Dismissed accordingly.

FAO-3430-2013 and FAO-8788-2014

The appeal i.e. FAO-3430-2013 too is filed by the appellant-Insurance Company on the ground that the driver of the bus was not at fault and, therefore, the Insurance Company of the offending vehicle i.e. bus cannot be made liable. Learned counsel for the appellant has submitted that it is the admitted case of the respondents that a dead bullock was lying on the road and to avoid the same, deceased-Amar Nath Mittal drove his car towards the right side of the road and, therefore, he hit into the bus which was being driven on its correct side.

The appeal i.e. FAO-8788-2014 is filed by the claimants-appellants on the ground that 50% contributory negligence has been wrongly applied.

No doubt, the Tribunal too came to record a finding that there was contributory negligence on the part of the driver of the car i.e -Amar Nath Mittal. However, this Court is not in agreement with the same and the said findings deserve to be set-aside. Infact, the Tribunal too did not really record the finding that the driver of the car was negligent or not. The findings reads under:-

> "It is held that the accident occurred due to contributory negligence of both the drivers as it cannot be pointed out which of the vehicle was clearly at fault."

PW1 Deepak Garg was one of the occupants of the car, who also received injuries. The statement of said Deepak Garg is re-produced below:-

> "I suffered injuries upon my elbow. I do not know to bring the record in the Court qua the injuries suffered by

> me upon my elbow and right knee. It is wrong to say that late Amar Nath was negligent in driving the vehicle and in order to safeguard the accident to be occurred with the dead bull died on the road he turn the vehicle to the left side or hit the vehicle from the front. It is wrong to say that I was not accompanying Amar Nath and was not travelling in the said vehicle which was being driven by Amar Nath. After receiving first aid from Government Hospital Nawan Shahar, I along with my family members had gone to Ivy Hospital, whereas Shubam was taken to PGI, Chandigarh in an Ambulance. It is wrong to say that I have deposed falsely."

On the other side, no independent witness was produced to prove the same. Even the FIR has been registered against the driver of the bus. In case the said driver of the bus was not driving at a high speed, he too would have been able to avoid the accident. Since the vehicle was coming from the opposite direction, the driver of the bus too was in a position to see that there was a bullock on the road which should have prompted him to slow down his vehicle.

In view of the above, the findings qua equally responsible is set-aside and, accordingly, the contributory negligence of 50% as determined cannot be sustained.

Accordingly, the FAO-3430-2013 is dismissed. However, in FAO-8788-2014, the impugned award dated 4.4.2013 is modified to the extent mentioned above by setting aside the findings qua contributory negligence.

<u>FAOs-137 and 138-2014</u>

The appeal i.e. FAOs-137 and 138 of 2014 are filed by the owner of the bus No.NL-02-B-1893. The appellant-owner of the bus is aggrieved by the award to the extent vide which the recovery rights has been given to the Insurance Company. It was contended that the recovery rights have been given only on the ground that the driving licence of respondent No.1 was not valid for transport vehicle and the driver of the bus was not authorised to drive the bus which does not fall in the category of either LMV/MMV/HGV.

However, after hearing learned counsel for the appellant-owner of the bus in question and after perusing the record, it is evident from the perusal of the driving licence Ex.R1 and placed on record in appeal as Annexure A-1 that the driver was authorised to drive the light passenger motor vehicle, medium passenger vehicle as well as heavy passenger vehicle alongwith LMV/MMV and HGV. The said argument of learned counsel for the respondent-Insurance Company that as per the witness RW1 Gurbir Singh Cheema from the DTO Office that he was not authorised to drive the transport vehicle cannot be sustained as the perusal of the said statement rather shows that the said RW1 denied any knowledge as to whether the driver of the bus was authorised to drive the transport vehicle or not. The relevant portion of the statement reads as under:-

> "I do not know as to from which date and year the above said procedure has been started as stated in my examination-in-chief. I am not in possession of any such document to show the said procedure in writing with me

today. It is wrong to suggest that there is no such procedure as stated in my chief and for this reason I am not in a position to produce any document in this respect. I cannot say whether respondent No.1 was authorised to drive the offending vehicle or not."

Further, as per the judgment rendered in the case of **New India Assurance Co. Ltd.** **Vs**. **R.Jayalakshmi and anr**, *2002 ACJ 252* and **Babu** **Vs**. **Public Service Commission**, *2003(4) R.C.R. (Civil) 448* as relied upon, a person having a licence to drive heavy passenger motor vehicle can drive a heavy goods vehicle without a specific endorsement to the said effect. The case of the appellant-owner is even better. Infact, there is specific endorsement in the driving licence that the same was valid even for a light passenger vehicle and heavy passenger vehicle.

Accordingly, the appeals i.e. FAOs-137 and 138 of 2014 are allowed and the finding to the extent vide which the recovery rights have been given to the Insurance Company is set-aside.

It is now clarified that the compensation shall now be paid by the Insurance Company alone and the enhanced amount as awarded in appeal i.e. FAO-5929-2013 shall also be paid by the Insurance Company.

Disposed of as above.

(NIRMALJIT KAUR)
JUDGE

October 03, 2019
ajay-1

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