IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-3736-2015(O&M)

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Rambati and others

...Respondents

(2) FAO-8094-2015(O&M)

Rambati

...Appellant

Versus

Basir and others

...Respondents

Date of Decision:-3.9.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Punit Jain, Advocate
for the appellant in FAO-3736-2015 and
for respondent No.3 in FAO-8094-2015.

Mr.Sumit Gupta, Advocate
for the appellant in FAO-8094-2015 and
for respondent No.1 in FAO-3736-2015.

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H.S. MADAAN, J.

**CM-25561-CII-2015 in
FAO-8094-2015**

This is an application under Section 5 of the Limitation Act for condonation of delay of 246 days in filing of the appeal.

Heard.

For the reasons mentioned in the application, the same stands allowed and delay of 246 days in filing of the appeal stands condoned.

**FAO-3736-2015(O&M) &
FAO-8094-2015(O&M)**

By this order, I shall dispose of two FAOs i.e. FAO-3736-2015 filed on behalf of appellant – Shri Ram General Insurance Company Ltd. and FAO-8094-2015 filed on behalf of appellant – Rambati, which have arisen out of the same accident.

Briefly stated, facts of the case are that on account of death of Kamal Singh in a motor vehicular accident, which took place on 9.1.2013 at about 8:10 p.m. in the area of Senior Secondary School near Agra Chowk, Palwal, statedly on account of rash and negligent driving of truck bearing registration No.HR-74A-0858 (hereinafter referred to as the offending vehicle) by respondent No.1 – Basir, his mother - Smt.Rambati had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Basir – owner and driver, Ajmat – owner and Shriram General Insurance Company Ltd. – insurer of the offending vehicle, claiming compensation to the tune of Rs.10 lacs.

On notice, all the three respondent had appeared and contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Palwal (hereinafter referred to as the Tribunal) while allowing the petition partly vide award dated 10.11.2014, awarded compensation of Rs.5 lakhs along with interest @ 6% per annum from the date of filing of the petition till actual realization to the claimant payable by the respondents jointly and severally.

The appellant/petitioner/claimant Smt.Rambati being of the view that the compensation awarded to her was on lower side, has approached this Court by way of filing an appeal seeking enhancement of compensation.

On the other hand, respondent No.3 – insurance company feeling that the amount of compensation awarded is on the higher side has also filed an appeal.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence adduced before it particularly deposition of eye-witness PW2 Puran Singh has returned a finding that Kamal Singh had died due to injuries sustained in a motor vehicular accident, which took place due to rash and negligent driving of the offending vehicle by respondent No.1. While coming to this conclusion, the Tribunal has taken into view formal FIR Ex.P3 and the fact that respondent No.1 had not appeared in the witness-box to rebut the stand taken by the claimants. Such finding recorded by the Tribunal is justified and no interference therewith is called for.

Now coming to the quantum of compensation. The Tribunal while dealing with that aspect has taken the age of deceased to be 35 years and his monthly income as Rs.5,000/-. As far as the age of deceased is concerned, that was correctly taken but notional income of the deceased taken as Rs.5,000/- is on the lower side. Learned counsel for the appellant/claimant has referred to minimum wages payable to the labourer in State of Haryana w.e.f. January 1, 2013 showing that the same was Rs.6,163/- per month at relevant time. The version of the claimant was that deceased was working as a labourer earning Rs.7,000/- per month and he was sole bread winner of the family. Therefore, in view of the minimum wages prevalent at the relevant time, the income of the deceased is assessed as Rs.6,163/-.

The Tribunal has not made any addition towards future prospects. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be made towards future prospects when the deceased was below the age of 40 years. Doing that the monthly income of the deceased is taken as Rs.6163 + 2465 = Rs.8,628/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** when the deceased was a bachelor, deduction towards self-expenses is to be taken as 1/2. Doing that the dependency of claimant comes out to Rs.4314/- per month, annual dependency comes out to Rs.4314 x 12 = Rs.51,768.

The Tribunal has used multiplier of 16, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.51768 x 16 = 8,28,288/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimant is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 8,28,288 + 30,000 = 8,58,288/-.

The Tribunal has awarded compensation of Rs.5,00,000/-. The same is enhanced to Rs.8,58,288/-.The claimant would be entitled to get interest @ 7.5% per annum on the enhanced amount of compensation of Rs.3,58,288(858,288 - 5,00,000) from the date of filing of the appeal till actual realization. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the FAO-8094-2015 filed on behalf of the claimant is allowed partly with costs.

Though learned counsel appearing for the appellant – insurance company has contended that the vehicle in question was not having a valid route permit and terms and conditions of the insurance policy were violated, therefore, the insurance company be either absolved of its liability or recovery rights be granted to it. However, learned counsel for the claimant has vehemently contested such contention stating that the insurance company had not led any evidence in that regard for that reason issue stuck in that respect was decided against the Insurance company.

After hearing learned counsel for the parties, I find that the submissions so made by learned counsel for the insurance company cannot be accepted. A perusal of the record goes to show that though in the written statement respondent – insurance company had taken up a plea that respondent No.1 the driver was not holding a valid and effective driving licence at the time of accident and terms and conditions of insurance policy were violated but it failed to adduce any evidence in that regard. It just tendered insurance policy and closed its evidence. The Tribunal on analysis of the evidence adduced before it has come to the conclusion that the driver was having a valid and effective driving licence at the time of accident and respondents No.1 and 2 have not violated any terms and conditions of the insurance policy and further insurance company is liable to indemnify the owner in accordance with terms of the insurance policy. I do not see any reason to differ with such findings recorded by the Tribunal.

Consequently, FAO-3736-2015 filed on behalf of the insurance company stands dismissed.

3.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No