IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 4136 of 2015 (O&M)
Date of decision : 28.3.2019

...

Bhajni Devi and others
................Appellants

vs.

Balwinder Singh @ Binder and others
.................Respondents

2) FAO No. 4137 of 2015 (O&M)

...

Mahinder Singh and others
................Appellants

vs.

Balwinder Singh @ Binder and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sagar Aggarwal, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate
for respondent No.3 - Insurance company

...

H. S. Madaan, J.

Vide this judgment, I intend to dispose of two appeals, bearing FAO No. 4136-2015 titled as Bhajni Devi and others vs. Balwinder Singh @ Binder and others and FAO No. 4137-2015 titled as Mahinder Singh and others vs. Balwinder Singh @ Binder and others, as both these appeals have arisen out of the same award.

Briefly stated, facts of the case are that on 6.10.2013, one Bhajna Ram, alongwith his wife Bhajni Devi, besides Mahinder Ram, Paramjeet, Raj Kumar, Kashmira, Preeto Devi (since deceased), Amriko Devi, Gaurav and Komal, were going from their village Kangthali to Grain Market Rajpura (Punjab), in Tata Pick-up bearing temporary No. HR-99DD-9753 having registration No. HR-74-8350, which was being driven by respondent No.1 – Balwinder Singh @ Binder, in a rash and negligent manner. Though he was asked by the persons travelling in the vehicle to drive the vehicle carefully at a moderate speed, but to no effect. When the vehicle was at a distance of 1 km from village Kangthali towards Cheeka side, then respondent No.1 - driver Balwinder Singh @ Binder, turned the vehicle towards his left side, as a result, the offending vehicle fell into ditches and turned turtle. All the occupants of the vehicle received multiple injuries. They were shifted to Mahabir Dal Hospital, Cheeka. However, on the way to hospital, Preeto Devi succumbed to the injuries and Bhajna Ram also succumbed to the injuries at General Hospital, Kaithal, on that very day. Formal FIR No. 109 dated 6.10.2013, for offences under Sections 279, 337, 304-A IPC, was registered at Police Station Siwan, against respondent No.1 – driver Balwinder Singh @ Binder.

The legal representatives of both the deceased have brought separate claim petitions under Section 166 of the Motor Vehicle Act. Legal representatives of Bhajna Ram, namely, Bhajni Devi widow aged about 40 years, Karamjit daughter aged about 19 years, Jagseer

Singh a son aged about 17 years, Jyoti Devi aged about 15 years and Reena Devi aged about 12 years minor daughters and father Jattu Ram, aged about 82 years, had filed MACT case No. 77 of 2013 against Balwinder singh @ Binder – driver of Tata Pick-up bearing temporary No. HR-99DD-9753 having registration No. HR-74-8350 (hereinafter referred to as 'the offending vehicle), as well as Sawraj Singh – owner of the offending vehicle and the New India Assurance Co. Ltd., Kaithal, insurer of the said vehicle. Whereas legal representatives of Preeto Devi, namely, Mahinder Singh – husband, Mewa Ram aged about 26 years and Baldev aged about 15 years, sons of Preeto Devi, had filed separate claim petition against those very respondents bearing MACT No. 78 of 2013. Since both the claim petitions had arisen out of the same accident, they were tried together and decided vide a consolidated award.

As per version of the petitioner-claimants in MACT 77 of 2013, Bhajna Ram was aged about 42 years at the time of his death and was earning Rs.15,000/- per month from his occupation of sale and purchase of cattle as well as working as a fruit vendor. The claimants were fully dependent upon his earnings.

Whereas case of claimants in connected claim petition bearing MACT 78 of 2013, is that Preeto Devi, aged about 45 years was earning Rs.15,000/- per month from running a grocery shop as well as on account of rendering services towards family members.

On notice, all the three respondents appeared and respondents No. 1 and 2 filed a joint written statement, in which they although admitted the accident, but pleaded that it was not caused due to negligence of respondent No.1 and a wrong FIR was got registered by the claimant against such respondent. The vehicle in question was wrongly involved in the case. According to such respondents, Bhajna Ram was working as a cleaner on the vehicle in question. On 6.10.2013, Preeto Devi (since dead), contacted respondent No.2 and hired vehicle in question through Bhajna Ram, as Preeto Devi and others had to go to Grain Market, Rajpura, for the purpose of labour work. Preeto Devi had also loaded her luggage including household articles in the said vehicle. Thereafter, the vehicle proceeded from Kangthali to Rajpura. Bhajna Ram, cleaner and Preeto Devi were sitting therein. When the vehicle reached about 1 km away from Kangthali, suddenly two oxen, who were fighting with each other, came in front of the vehicle in question. Respondent No.1 in order to avoid the accident, had to take a sharp turn towards the conductor side, resultantly the vehicle turned turtle and Bhajna Ram and Preeto Devi suffered fatal injuries. There was no negligence on the part of Balwinder Singh @ Binder – driver. Those respondents denied that the vehicle in question was being driven at a fast speed and in a rash and negligent manner by respondent No.1. According to them, the accident had taken place without any fault of respondent No.1 and per chance. Refuting the remaining averments, those respondents prayed for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.3 – Insurance company, it raised various legal objections including challenging maintainability of the claim petition, further contending that the petition was bad for non-joinder of necessary parties; that the claim petition had been filed by the claimants in collusion with respondents No. 1 and 2; that the petitioner – claimants were estopped by their act and conduct to file the claim petitions; that respondent No.1 was neither the driver of the offending vehicle nor he was holding any driving licence. He was not in employment of the insured i.e. respondent No.2; that no name and address of driver had been given in the FIR; that no permanent number of the vehicle had been given there in. The driver was also arrested later on. Therefore possibility of involving the vehicle and respondent No.1 wrongly in this case could not be ruled out. The fitness of the vehicle had already expired before the date of accident; that the vehicle was being driven against the terms and conditions of the policy because as per FIR 10 paid passengers were travelling in the vehicle in question; that the vehicle was being driven while heavily overloaded and as such driver could not control the said vehicle and plunged into ditches and turned turtle; that the vehicle was being plied without route permit. On merits such respondent refuted material assertions in the claim petitions, while coming with a prayer for dismissal thereof.

From the pleadings of the parties, following issues were framed:-

1. Whether Bhajna Ram son of Jattu Ram resident of village Kangthali and Preeto Devi wife of Mahinder Singh, resident of village Pararpur had died on account of the injuries received in a road side vehicular accident which had occurred on 6.10.2013 in the area of Police Station Siwan, District Kathal on account of rash and negligent

driving of vehicle bearing registration No. HR-64-8350 (temporary No. HR-99DD-9753) by respondent no.1 ? OPP

2. Whether the claimants of both the petitions are entitled to be compensated, if so to what extent and by whom? OPP
3. Whether respondent no.1 was driving the above vehicle without holding a valid and effective driving licence at the relevant time, if so its effect: OPR-3
4. Whether the vehicle in question was being driven in contravention of the Motor Vehicles Act and term and conditions of the insurance policy, if so its effect? OPR-3
5. Relief

Parties led evidence in support of their respective claims. After hearing the arguments, the Tribunal decided issue No.1 in favour of petitioner-claimants, issue No.2 was also decided in favour of the claimants. Issue No.3 was decided against respondent no.3. Issue No. 4 was decided in favour of respondent No.3- Insurance company. As a result of findings on the issues. in claim petition No.77 of 2013, a compensation of Rs.6,18,380/- was awarded on account of death of Bhajna Ram and in claim petition No. 78 of 2013, a sum of Rs.7,19,000/- was awarded on account of death of Preeto Devi, alongwith interest @ 7.5% per annum. Respondents No. 1 and 2 were held to be liable to pay the compensation. Whereas, respondent No.3 Insurance company was exonerated. The compensation amount was apportioned and certain directions were issued regarding the payment of shares to the claimants inter se duly incorporated in the award.

The petitioner-claimants, felt aggrieved by the award and they have filed the present separate appeals, i.e. legal representatives of Bhajna Ram have filed FAO No. 4136 of 2015 whereas legal representatives of Preeto Devi have filed FAO No. 4137 of 2015, for enhancement of compensation and saddling Insurance company with liability, notices of which were given to the respondents. Only respondent No.3 had put in appearance to offer contest.

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

According to the learned counsel for the appellants, the compensation awarded by the Tribunal is on the lower side and the same should be enhanced and that respondent No.3 Insurance company should also be made liable. Whereas these contentions are being repelled by learned counsel appearing for the Insurance company.

A perusal of the award goes to show that the Tribunal on appreciation of evidence adduced before it, considering statement of Bhajni Devi – PW-1, who had provided an eye witness account of the accident and statement of PW-2 Mahinder Singh, who had lodged the FIR regarding the accident, copy of which is Exhibit PA, report under Section 173 Cr.P.C. Exhibit PB, charge sheet Exhibit PC, site plan Exhibit PD, statement of Mahinder Singh Exhibit PE, post mortem report of Bhajna Ram Exhibit PF and post mortem report of Preeto Devi Exhibit PG, in view of the fact that respondents No. 1 and 2 have admitted the accident and involvement of the vehicle in question, however, they had not led any evidence in rebuttal, came to the conclusion that the accident in question resulting into death of Bhajna Ram and Preeto Devi, took place due to sole rash and negligent driving of the offending vehicle by respondent No.1. In that way, the petitioner – claimants were found to be entitled to get compensation.

As far as, compensation on account of death of Bhajna Ram is concerned, his age was taken to be 55 years as entered in the post mortem report Exhibit PF. His monthly income was taken to be Rs.4,600/- , being minimum wages paid to a casual labourer in the year 2013, the year of accident, considering that for some days he might not have worked or found work. Increase of 15% was rightly made towards future prospects. The total monthly income having been arrived at Rs. 4,600 + Rs.690 = Rs.5,290/-

Keeping in view the number of legal representatives of the deceased to be 6, 1/4th amount was deducted towards self expenses and maintenance of the deceased. No fault can be found with the extent of such deduction. Therefore, loss of dependency was arrived at Rs.5,290 – Rs.1,325 = Rs.3,965/- per month. The multiplier of 11 was rightly adopted and then compensation was worked out to be Rs.3,965 x 12 x 11 = Rs.5,23,380/- . However, the Tribunal had awarded a sum of Rs.20,000/- only towards last rites and transportation of the dead body. However, as per authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** under the conventional Heads, the claimants are entitled to get a sum of Rs.15,000/- under the Head loss of estate, Rs.40,000/- under the Head loss of consortium, Rs.15,000/-

towards funeral expenses (Rs.15,000 + 40,000 + 15,000 = Rs.70,000/-.

The total compensation amount as such comes out to Rs.5,23,380 + Rs.70,000/- = 5,93,380/- . The Tribunal fell in error in awarding Rs.75,000/- to the widow of the deceased towards the loss of consortium, when this amount should have been Rs.40,000/- only.

However, neither any appeal has been filed by any of the respondents nor any cross objections have been preferred, I do not find it proper and appropriate to reduce the amount of compensation. Accordingly, the claimants are held entitled to total compensation of Rs.6,18,380/- as already awarded by the Tribunal.

Now coming to the death case of Preeto Devi, the Tribunal had taken age of Preeto Devi to be 48 years. Taking her to be as a house wife considering the services rendered by her to the family, took her notional income to be Rs.4,000/- per month, since the accident had taken place in the year 2013. Keeping in view the facts and circumstances of the case, since her such income was assessed on assumption basis, no deduction was made towards personal expenses. The Tribunal was justified in doing to. By adopting the multiplier of 13, the dependancy was worked out to Rs. Rs.4,000 x 12 x 13 = Rs.6,24,000/-.

However, the Tribunal had awarded a sum of Rs.20,000/- only towards last rites and transportation of the dead body. However, as per authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** under the conventional Heads, the claimants are entitled to get a sum of Rs.15,000/- under the Head loss of estate, Rs.40,000/- under the Head loss of consortium, Rs.15,000/- towards funeral expenses (Rs.15,000 + 40,000 + 15,000 = Rs.70,000/-.

The total compensation amount as such comes out to Rs.6,24,000 + Rs.70,000/- = 6,94,000/- . The Tribunal fell in error in awarding Rs.75,000/- to the husband of the deceased towards the loss of consortium, when this amount should have been Rs.40,000/- only.

However, neither any appeal has been filed by any of the respondents nor any cross objections have been preferred, I do not find it proper and appropriate to reduce the amount of compensation. Accordingly, the claimants are held entitled to total compensation of Rs.7,19,000/- as already awarded by the Tribunal.

The Tribunal referring to the Insurance Policy has observed that the deceased were alongwith others were travelling as gratuitous passengers and policy(s) Exhibits RB and RD does not show that any premium for passengers was taken. Furthermore, it was a goods carrying package policy. This is so recorded in the Registration certificate Exhibit RA that it related to goods vehicle . It has been further observed that policy expressly provides that insured would not be indemnified if vehicle is used or driven otherwise than in accordance with the schedule and though no premium was paid for travelling of passengers in goods vehicle, therefore, there did not exist any contract between the insurance company and owner to cover the risk of the passengers in the vehicle. Therefore, the Insurance company was not made liable, finding that it was not a case of to 'pay and recover'. As a matter of fact, the Tribunal fell in error in coming to that conclusion.

The Tribunal had however, rejected the contention of the Insurance company that there has been violation of terms and conditions of the police, since the vehicle was not having a valid route permit and further since the driving licence of respondent No.1 was issued from the State of Nagaland, licence was also not valid.

Learned counsel for the appellants has referred to authority ***Manuara Khatun & Ors Versus Rajesh Kr. Singh & Drs. 2017 ACJ 1031*** by the Apex Court wherein while dealing with a claim petition under Sections 147 and 166 of the Motor Vehicles Act, 1988 when the accident had been caused due to negligence of driver of the vehicle, which was carrying gratuitous passenger, it was observed that Insurance Company is not liable to pay compensation to victims of accident, who were gratuitous passengers, though such insurance company was directed to pay compensation awarded to victims and recover the same from owner of vehicle in execution proceedings arising in that case. Learned counsel for the appellant/claimant has further referred to consolidated judgment delivered by High Court of Delhi in MAC APP.81 to 84, 87 and 90 of 2018. As per facts of the said case several persons along with respective goods were travelling in the offending truck to be transported to Gangotri, Uttrakhand from their village Baghanki, Manesar, District Gurugram, Haryana; they were carrying goods for the holding of *LANGAR* (free kitchen) by all of them; that on account of rash and negligent driving of the truck by its driver, the accident had taken place, consequently the truck along with goods had fallen into a ditch, resultantly all the occupants of the truck including driver had sustained fatal injuries. The legal representatives of the deceased persons travelling in the truck had brought claim petitions, which were allowed by MACT and compensation was granted to them. However, they had filed appeals being dissatisfied with the amount of compensation granted to them and those appeals came up for hearing before Delhi High Court. The question cropped up as to whether the deceased were gratuitous passengers and insurance company was liable to pay compensation. Relying upon the judgment ***Manuara Khatun & Drs Versus Rajesh Kr. Singh & Drs(supra)*** by the Apex Court wherein it was declared that in case of gratuitous passengers, it is duty of the insurer to satisfy the award first, while invoking the principal of "pay and recover"; that principal was applied and insurance company was directed to pay the awarded compensation to claimants and thereafter, recover it from the owner of insured vehicle and since the driver of the vehicle had expired and no steps have been taken to bring on record his legal representatives.

Learned counsel for the appellants has further stated that Special Leave Petition filed against the judgment passed by the Delhi High Court had since been dismissed. He has referred to order dated 25.10.2018 by the Apex Court in that regard.

Under the circumstances, the appeals are allowed partly. The award passed by the Tribunal is modified with the observation that Insurance company would pay the amount of compensation alongwith interest and costs to the claimants at the first instance. However, it would be entitled to recover the amount so paid from respondents No.1 and 2 respectively.

(H.S. Madaan)
Judge

28.03.2019
chugh

Whether speaking / reasoned Yes / No

Whether reportable Yes / No