In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 24.9.2019

FAO- 3113 of 2016 (O&M)

United India Insurance Company Limited

---Appellant

versus

Gurpreet Kaur and others

---Respondents

FAO- 6922 of 2016 (O&M)

Gurpreet Kaur and others

---Appellants

versus

Sanjay and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ram Avtar, Advocate
for the insurance company

Mr. Pankaj Bali, Advocate
for the claimants

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Rekha Mittal, J.

This order will dispose of FAO Nos. 3113 and 6922 of 2016 as these have emerged out of the same award dated 12.1.2016 passed by the Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") whereby compensation has been assessed on account of death of Pyara Singh in a motor vehicular accident that took place on 12.11.2014.

FAO No. 3113 of 2016 has been filed by the United India

Insurance Company Limited (hereinafter referred to as 'the insurance company”) whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation as well as on the issue of driving licence.

The Tribunal awarded Rs. 43,75,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 25,000/-
Deduction for personal expenses	$1/4^{th}$
Multiplier	18
Loss of dependency	Rs. 40,50,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of care and guidance to claimants No. 2 and 3	Rs. 2,00,000/- (Rs. 1 lakh each)
Funeral Expenses	Rs. 25,000/-

Counsel for the insurance company would argue that income of deceased assessed is on higher side and needs reduction. Compensation allowed under conventional heads may be restricted to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034.**

Another submission made by counsel is that as per report Ex. R4 i.e. information received under the Right to Information Act, 2005 (in short “the Act'), driving licence was found to be fake, therefore, the insurance company is entitle to right of recovery against the insured after payment of compensation to the claimants.

Counsel representing the claimants, on the contrary, has supported assessment of monthly income of deceased but would pray for extending benefit of increase in income for future prospects.

The plea of claimants is that deceased was a contractor and had two tractors used for lifting soil thereby earning Rs. 50,000/- per month. The plea of claimants with regard to deceased working as a contractor does not find corroboration from any source much less documentary evidence. However, it has been proved on record that tractor No. HR 05-AL-3294 was owned by Pyara Singh which was purchased by taking loan of Rs. 3,90,533/- from Kotak Mahindra Bank Limited. The Tribunal, in view of testimony of Amar Kumar PW4 that deceased was paying monthly instalment of Rs. 11,550/- from 10.3.2014 onward and liability to pay loan had been discharged upto 24.3.2015, has assessed income of deceased at Rs. 25,000/- per month. The manner in which the Tribunal had proceeded to assess income of deceased is absolutely faulty and can not be affirmed. The mere fact that deceased had paid instalments of loan itself is not an evidence that the money actually represented his income or can form the basis for assessment of income of deceased at Rs. 25,000/- per month. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with deceased had a tractor purchased by obtaining loan, income of the deceased is assessed at Rs. 7000/- per month. The claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 15,87,600/- [7000x12x18 =15,12,000 +6,04,800 (40%) = 21,16, 800 – 5,29,200(1/4th)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs. 70,000/-, detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 16,57,600/- and compensation assessed by Tribunal is reduced to the extent of Rs.27,17,400/- (43,75,000-16,57,600). The insurance company shall be entitle to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

This brings the Court to contention of the insurance company in respect of driving licence Ex. R2 possessed by Sanjay son of Mithu Ram, driver of JCB bearing No. HR-45A-1630. Perusal of findings of the Tribunal, in para 20 of the award, would reveal that the insurance company placed on record document Ex. R4 i.e. photocopy of information received under the Act alongwith report of Davinder Sharma, investigator of the company. The insurance company did not examine a representative of the concerned licensing authority along with relevant records with an opportunity to the insured of the vehicle to cross examine that witness. They even did not examine Davinder Sharma, investigator of the company who purportedly sought information under the Act, photocopy whereof was placed on record. In the given circumstances, it is difficult to accept contention of the insurance company that it has successfully discharged onus to prove that driver was not duly licensed on the date of occurrence, thus, insured is guilty of breaching the terms and conditions of policy entitling the insurance company to press for right of recovery. That being so, findings of the Tribunal on issue No. 3 can not be termed as faulty, requiring intervention.

No other point has been raised.

In view of what has been discussed hereinbefore, appeal filed by the insurance company is partly allowed in the aforesaid terms. At the same time, the appeal preferred by the claimants stands disposed of.

(Rekha Mittal)
Judge

24.9.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No