IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-725-2013(O&M)

National Insurance Co. Ltd.

...Appellant

Versus

Jaspal Singh and others

...Respondents

(2) FAO-3145-2015(O&M)

Jaspal Singh and others

...Appellants

Versus

Darshan Singh and others

...Respondents

Date of Decision:-19.9.2019

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

Present: Mr.Gopal Mittal, Advocate
for the appellant in FAO-725 of 2013.

Mr.Vishwajit Bedi, Advocate
for the appellants in FAO-3145-2015 and
for respondents No.1 to 3 in FAO-725 - 2013.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-725-2013 filed on behalf of appellant – National Insurance Company Ltd. and FAO-3145-2015 filed on behalf of appellants/claimants - Jaspal Singh and others, which have arisen out of the same accident.

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On account of death of Arjan Singh son of Nathu ram in a motor vehicular accident, which took place on 20.9.2010 at 6:00 p.m. at bus stand village Naiwala, Tehsil Patran, District Patiala, statedly on account of rash and negligent driving of Max Pick Up Mohindra bearing registration No.PB-11-AJ-9620(hereinafter referred to as the offending vehicle) by respondent No.1 Darshan Singh, legal heirs of such deceased, namely, his three sons Jaspal Singh, aged about 27 years, Baldev Singh, aged about 29 years and Jagdish Singh, aged about 31 years had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Darshan Singh – owner and driver and National Insurance Company Ltd., Patiala – insurer of the offending vehicle, claiming compensation to the tune of Rs.10 lakhs with interest. In the claim petition, the claimants had arrayed Jaswinder Kaur married daughter of Arjan Singh, deceased as proforma respondent No.3.

On being put to notice, all the three respondents had appeared. Respondents No.1 and 2 had contested the claim petition, whereas respondent No.3 – Jaswinder Kaur had admitted the assertions in the claim petition pleading no objection if the claim petition was accepted.

On conclusion of trial, the Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) accepted the claim petition vide award dated 25.10.2012 and awarded compensation of Rs.1,72,000/- to the claimants along with interest @ 7% per annum from the date of filing of the petition till actual realization. The amount was apportioned among all the claimants in equal shares. Respondents No.1 and 2 were made jointly and severally liable to pay the said amount.

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The claimants felt dissatisfied with the quantum of compensation awarded and have approached this Court seeking enhancement of compensation. Whereas the insurance company has filed separate appeal praying for setting aside of the award.

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

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

The first argument put forward by learned counsel for the insurance company was that it was a case of contributory negligence because the place of accident was turn of the road; the deceased was to turn towards right side, whereas the jeep was coming from behind; the deceased has turned his bicycle towards right side all of a sudden without giving any signal or obeying the traffic rules; this has come in the testimony of PW Gurdas Ram – the complainant but the Tribunal lost sight of that fact and wrongly came to the conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1 – Darshan Singh.

Whereas counsel for the claimants vehemently contested this contention.

After hearing learned counsel for the parties and going through the record, I find that PW1 Gurdas Ram, who had provided the eye-witness account of the accident in his affidavit Ex.PA had fully supported the case of the claimants contending that the accident had taken place due to rash and negligent driving of respondent No.1 in driving the

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offending vehicle inasmuch as though the deceased had signalled to take turn towards village Naiwala even though the offending vehicle hit him. A line or two cannot be taken out of his cross-examination and interpreted out of context. In this case, the respondents had denied the accident itself and had not taken any specific plea of contributory negligence to rebut the oral and documentary evidence adduced by the claimants. The respondents could not counter the cogent and convincing evidence brought on file by the claimants to prove issue No.1. Therefore, this contention of learned counsel for the insurance company is without any merit.

To assess the amount of compensation payable, the Tribunal has taken age of deceased to be 65 years, his monthly income as Rs.4,000/- and dependency of claimants to be Rs.2,700/- per month, deducting 1/3rd of the amount around towards personal and living expenses and then adopting multiplier of 5, compensation of Rs.1,62,000/- has been worked out. In addition to that Rs.10,000/- has been awarded as funeral expenses and the total compensation comes out to Rs.1,72,000/-. Though in terms of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, the claimants are entitled to Rs.15,000/- as funeral expenses and Rs.15,000/- towards loss of estate. The Tribunal has rightly worked out the compensation payable, though under conventional heads, an additional sum of Rs.20,000/- deserves to be given.

Therefore, the total compensation comes out to Rs.1,72,000 + 20,000 = 1,92,000/-.

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In this way, the enhanced amount comes out to Rs.20,000/- (1,92,000 - 1,72,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.20,000/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

Learned counsel for the insurance company has raised an objection with regard to driving licence of respondent No.1 stating that it was valid for LMV only, whereas he was driving light commercial vehicle i.e. goods carrying commercial vehicle for which a specific endorsement is required under Section 3 of the Motor Vehicles Act and furthermore fitness certificate was also required. However, the Tribunal has come to the conclusion that respondent No.1 was holding a valid and effective driving licence at the time of accident.

In ***Sant Lal Versus Rajesh & Ors. etc., 2017(3) RCR (Civil) 757*** the Apex Court had observed that a tractor attached with trolley does not become transport vehicle and when the driver was having licence to drive light motor vehicle but was driving tractor attached with trolley, it is to be taken as transport vehicle of category of light motor vehicle. It was further observed that the driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement. Hence there was no breach of the conditions of the policy. Under the circumstances, the insurance company cannot escape liability to pay compensation for the said reason.

With regard to the objection that the claimants being major sons of the deceased are not entitled to get any compensation, that

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contention is also without any force. The counsel for the claimants had referred to judgment ***New India Assurance Co. Ltd. Versus Ramya Raghavan and another 2006 ACJ 2347 (Kar.)*** before the Tribunal wherein it was observed that proof of actual dependency is not necessary and the married sons/daughters are entitled to compensation for death of their mother/father. However, this authority was wrongly not taken into consideration by the Tribunal.

Learned counsel for the claimants has referred to Apex Court authority ***Smt.Manjuri Bera Versus The Oriental Insurance Company Ltd. and Anr., 2007() RCR(Civil) 674*** wherein while dealing with a case where a person, who had died in a road side accident had not left any legal heir except married daughter, such married daughter was found entitled to compensation though she was not dependent on her father. It was observed that a legal representative is entitled to compensation even if he was not dependent on deceased and there was no loss of dependency. The Tribunal has though referred to this authority but has clearly misinterpreted the same.

Learned counsel for the claimants has placed reliance upon judgment ***New India Assurance Co. Ltd. Versus Ashwin Vrajlal Rajgor and Others, 2005 ACJ 1618*** by a Division bench of Gujarat High Court which was a case of death of a person in a road side accident, who was a bachelor and had not left any Class I heir or legal representative, then brother's son and brother's wife were held to be legal representatives of the deceased entitled to compensation in the absence of any Class I heir.

Learned counsel for the claimants has further referred to

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judgment passed by a Co-ordinate Bench of this Court in FAO-5452 of 2012 titled ***The New India Assurance Company Ltd. Versus Kuldeep Singh and others***, decided on 2.8.2013 wherein it was observed that even if a son is major and is earning, he does not stop looking to his father for financial help. It is not a case where the sons were drawing big salary and that they could not look to their father, who was getting petty amount. Sons even if they are major do not lose the status of legal representatives about which there is reference in Section 166(1)(c) of the Act. Therefore, the major sons can maintain a claim petition for compensation on the death of their father.

Therefore, with the above modifications **FAO-3145-2015** filed by appellants/claimants Jaspal Singh and others is allowed partly with costs. Consequently, **FAO-725-2013** filed on behalf of the Insurance Company Ltd. stands dismissed.

19.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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