IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. F.A.O No. 3948 of 2016

The Oriental Insurance Co Ltd. ...Appellant

Versus

Sukhwinder Singh and others ...Respondents

2. F.A.O No. 6385 of 2018

The Oriental Insurance Co Ltd. ...Appellant

Versus

Mphit Kumar and others ...Respondents

Date of decision:- 15.10.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.P. Gupta, Advocate, for the appellant in both the appeals

Mr. J.S. Cooner, Advocate for respondent No. 1 to 3 in FAO No. 3948-2016

Mr. Rajesh K. Sharma, Advocate for respondent No. 1 in FAO No. 6385-2018

Mr. R.K.S. Brar, Addl. A.G. Haryana

RITU BAHRI J. (Oral)

1. The above mentioned two appeals, are being disposed of by this common judgment, having arisen out of the impugned award dated 15.01.2016 and 26.04.2018 passed by the learned Motor Accident Claims Tribunal, Chandigarh and Panchkula respectively.

Facts not in dispute

2. The facts which are not in dispute are that on 15.09.2014, the deceased Kulwant Kaur along with other passengers which includes Mohit were going in a Haryana Roadways bus bearing registration No. HR-37-C-3414. The bus was being driven by respondent No. 3 in a rash and negligent

manner. When the bus reached within the area of village Chhotti Bassi on the bridge of Begna River on Naraingarh to Shahzadpur road, in the meantime, the said bus after breaking side grills of river bridge fell in the begna river and all the occupants of the bus suffered multiple and grievous injuries. They were shifted to General Hospital, Naraingargh. The deceased Kulwant Kaur was referred to PGI Chandigarh where she died during the course of treatment and Mohit Kumar was shifted to Government Medical College and Hospital, Sector 32 where he remained admitted from 21.09.2014 till 05.10.2014 in PGI, Chandigarh. F.I.R No. 222 dated 15.09.2014 under Sections 279/337/304-A IPC was registered at P.S. Naraingarh.

3. While assessing the compensation on account of death of Kulwant Kaur, the Tribunal took her income at Rs.31760/- per month and deducted 1/3rd as dependency. The multiplier of 09 was applied. Rs.25,000/- were awarded towards funeral expenses. The total compensation awarded to the claimants was Rs.23,11,792/-.

4. While assessing the compensation on account of injury suffered by the Mohit Kumar (i.e 100% permanent disability), the Tribunal awarded the compensation of Rs.23,29,026/- i.e Rs.1,22,626 towards medical expenses and treatment charges, Rs. 2 lacs towards permanent disability, Rs. 2 lacs towards pain and suffering, Rs.6,48,000/- under the head of attendant charges, Rs. 10,58,400/- towards loss of future income, Rs.50,000/- towards diet and Rs. 50,000/- towards transportation charges

5. In FAO No. 3948-2016, learned counsel for the appellant contends that the claim petition is liable to be dismissed, as the claimants were major children of the deceased and are not entitled for compensation.

Reference has been made to judgment of Hon'ble the Supreme Court of India in a case of ***Smt.Manjuri Bera vs. Oriental Insurance Co. Ltd and another, 2007 (2) RCR (Civil) 675.***

6. Learned counsel for the appellant has further argued that driving licence of the driver was issued by Manipur Authority whereas the driver was not a resident of Manipur.

7. Learned counsel for the appellant has argued that the capacity of the bus was 52 passengers whereas as per the statement of P.W.4 Rameshwar Dass at the time of accident, the bus was jam packed and more than 80 persons were travelling in the bus. Thus, there was a breach of policy condition and the Tribunal ought to have exonerated the appellant-Insurance Company.

8. The first argument is liable to be rejected, in view of judgment of Hon'ble the Supreme Court judgment in a case of ***Montford Brothers of St. Gabriel and another vs. United India Insurance and another etc, 2014 (1) RCR (Civil) 884***. In para 9 to 12, it has been observed as under:-

> "9.The Act does not define the term "legal representative" but the Tribunal has noted in its judgment and order that clause (C) of Rule 2 of the Mizoram Motor Accident Claims Tribunal Rules, 1988, defines the term `legal representative' as having the same meaning as assigned to it in clause (11) of Section 2 of the Code of Civil Procedure, 1908, which is as follows:
> "Section 2(11)`Legal representative' means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves On the death of the party so suing or sued".
>
> 10. From the aforesaid provisions it is clear that in case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. The issue as to who is a legal

representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case. But as a legal proposition it is undeniable that a person claming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

11. Learned counsel for the Insurance Company tried to persuade us that since the term `legal representative' has not been defined under the Act, the provision of Section 1-A of the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context, he cited judgment of this Court in the case of Gujarat State Road Transport Corporation, Ahmedabad vs. Raman Bhai Prabhatbhai & Anr.[1]. In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the appellant that since the term `legal representative' is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

> "11. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of

the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj.195) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased."

12. From the aforesaid quoted extract it is evident that only if there is a justification in consonance with principles of justice, equity and good conscience, a dependant of the deceased may be denied right to claim compensation. Hence, we find no merit in the submission advanced on behalf of the respondent-Insurance Company that the claim petition is not maintainable because of the provisions of the Fatal Accidents Act."

09. With regard to second argument, no evidence was led by the Insurance Company with respect to validity of licence before the Tribunal. The Insurance Company had the liberty to do verification of the driving licence but they chose not to do so. Thus this argument is also rejected.

10. With regard to last argument, the same is also rejected in view of judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Co. Ltd. vs. Anjana Shyam and others, passed in Civil Appeal NO. 2422-2459 of 2001, decided on 02.08.2007*** wherein the matter was that the bus which had the capacity of 42 passengers carried 90 passengers and had met with an accident. In para 16, it has been observed s under:-

"16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.

11. The judgment referred to by learned counsel for the appellant-Insurance Company in a case of ***Smt. Manjuri Bera's case (supra)*** is not applicable to the facts of the present case as in ***Manjuri Bera's case (supra)***, Hon'ble the Supreme Court was examining the provisions of Section 2 (11) CPC and had not interpreted Section 149 (2) of the Motor Vehicles Act.

12. In view of the above discussion, the appeal stands dismissed.

15.10.2019 **(RITU BAHRI)**
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***