In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 10.12.2019

FAO No. 4102 of 2016 (O&M)

Future Generali India Insurance Company Limited

---Appellant

versus

Ram Murti @ Murti Devi and others

---Respondents

FAO No. 7313 of 2016 (O&M)

Ram Murti @ Murti Devi and others

---Appellants

versus

Sanjeev Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rajesh K. Sharma, Advocate
for the insurance company

Mr. R.S.Budhwar, Advocate,
for the claimants

None for respondents No. 5, 6, 8 and 9 in FAO No. 4102 of 2016

***

Rekha Mittal, J.

This order will dispose of FAO Nos. 4102 and 7313 of 2016 as these have emerged out of the same award dated 26.4.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short "the Tribunal") whereby compensation has been assessed on account of death of Suresh Kumar in a motor vehicular accident that took place on 20.5.2015.

FAO No. 4102 of 2016 has been filed by Future Generali 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 findings of the Tribunal on issue No. 1, quantum of compensation and liability of the insurance company.

FAO No. 4102 of 2016

Counsel for the insurance company would argue that claimants examined Sachin Kumar PW2 to establish their plea that accident is the result of rash and negligent driving of offending vehicle tractor-trolly bearing No. HR-01-V-3869 driven by Sanjeev Kumar. It is argued that Sachin Kumar in his cross examination had stated to the following effect:-

> “It was head on collision. The alleged accident had taken on the metaled portion of the road.”

It is argued with vehemence that in view of aforesaid fact elicited in cross examination of Sachin Kumar, negligence is liable to be attributed to the deceased, driver of canter bearing No. HR-65-6662.

Another submission made by counsel is that it has been brought on record that onion bags were loaded in the trolly attached with the aforesaid tractor and as such, the insured in guilty of using the vehicle for hire or reward/commercial purpose, therefore, the insurance company has wrongly been fastened with liability to pay compensation. In addition, it is argued that trolly loaded with onions was attached with the tractor but the driver was not authorized to drive a transport vehicle for want of necessary endorsement on his driving licence permitting him to drive a light motor vehicle, therefore, insured is guilty of violating the terms and conditions of policy on the basis whereof the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants. Counsel has also sought to assail quantum of compensation assessed by the Tribunal but contention of the insurance company in this regard would be addressed while disposing of appeal filed by the claimants.

Counsel representing the respondents-claimants has supported findings of the Tribunal on the question of negligence.

There is no representation on behalf of owner of the offending tractor-trolley aforesaid.

Sachin Kumar PW2, one of the occupants of ill-fated canter driven by Suresh Kumar was examined in the case. He tendered into evidence his duly sworn affidavit Ex. PW2/A wherein he reiterated version of the claimants that accident is the result of rash and negligent driving of offending tractor-trolley. He has deposed that at about 8-00 p.m., when they reached near village Simbalwal, offending tractor-trolley came from the turn from Babain side driven by respondent No. 1 rashly and negligently and at a high speed without blowing any horn. Suresh Kumar tried his best to avoid the accident but could not succeed and trolley struck the driver side of canter. Due to the impact, canter turned turtle and Suresh Kumar received multiple injuries. The mere fact that accident was head on collision or had taken place on the metaled portion of the road *ipso facto* is not sufficient to attribute negligence to the deceased. Perusal of cross examination of Sachin Kumar would reveal that there is no challenge to his testimony that the deceased tried to avoid the accident but could not succeed and trolley struck driver side of canter as a result whereof, canter turned turtle.

Undenyingly, driver of offending vehicle did not appear in the witness box to counter case of the claimants and testimony of Sachin Kumar. An adverse inference is liable to be drawn against respondents No. 1 to 3 before the Tribunal for their failure to examine driver of offending vehicle without any tangible explanation. There is no dispute that on due investigation of FIR registered at the behest of Sachin Kumar, driver of offending vehicle was put to trial for committing offence punishable under Sections 279 and 304-A IPC.

As an upshot of the aforesaid discussion, I do not find any reason to interfere in well considered and well founded findings of the Tribunal on issue No. 1. As a result, contention raised by the insurance company with regard to contributory negligence of the deceased merits rejection and ordered accordingly.

The insurance company did not raise any plea that the vehicle was being used for commercial purpose in violation of the terms and conditions of the insurance policy. As such, there was no opportunity with the insured to defend any such contention of the insurance company. This apart, the mere fact that onions were loaded in the trolley itself is not an evidence that the tractor was being used for commercial purpose. The contention of the insurance company in respect of the driving licence is misconceived when examined in the light of judgments of Hon'ble the Supreme Court **Nagashetty vs. United India Insurance Company Limited, 2001(4) RCR (Civil) 597** and **Mukund Dewangan vs. Oriental Insurance Company Limited 2017 (7) Scale 731 .**

In view of what has been discussed hereinbefore, the appeal filed by the insurance company is disposed of, on the aforesaid aspects of the matter.

FAO No. 7313 of 2016

The Tribunal awarded Rs.26,55,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 12,000/-
Additional in income for future prospects	50%
Deduction for personal expenses	1/4
Multiplier	15
Loss of dependency	Rs. 24,30,000/-
Loss of consortium to widow	Rs. 1,00,000/-
Loss of care and guidance for minor children	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-

Counsel for the claimants would argue that compensation assessed by the Tribunal merits enhancement to bring in conformity with just and reasonable compensation.

Counsel for the insurance company, on the contrary, would argue that income of the deceased assessed by the Tribunal is on higher side and needs modification. Compensation allowed under conventional heads and addition in income for future prospects need modification 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.**

Indisputably, the deceased was working as driver of canter bearing No. HR-65-6662 owned by Ashwani Kumar of Ladwa and he sustained injuries while driving the aforesaid vehicle. The plea of claimants is that deceased was earning Rs. 15,000/- per month while working as a driver. They did not examine employer of the deceased to prove his income. The Tribunal has assessed income of the deceased by taking into consideration the rate fixed by the Deputy Commissioner, Kurukshetra (known as DC rates). The DC rates are meant for payment of wages to employees out of contingency fund created by the State Government. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with that the deceased was driver of a canter, income of deceased is assessed at Rs. 8000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 15,12,000/- [8000 x 12 x15) + (40% thereof) –(¼)].

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. 15,82,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs. 10,73,000/-. The insurance company shall be entitle to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

The appeals are disposed of accordingly.

(Rekha Mittal)
Judge

10.12.2019

PARAMJIT

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes/No