**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-6272-2015(O&M)
Date of Decision:-28.5.2019

Inderpal and another

...Appellants

Versus

Shriram General Insurance Company Ltd. and others

...Respondents

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

Present: Mr.Maninder Arora, Advocate
for the appellants.

Ms.Sheenu Sura, Advocate
for respondent No.1.

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**H.S. MADAAN, J.**

On account of death of Satvir Singh son of Sh.Kanhiya Lal in a motor vehicular accident, which took place on the intervening night of 7/8.7.2012 in the area of Shani Mandir of village Dungera Wali, District Meerut (UP) statedly on account of rash and negligent driving of vehicle bearing registration No.DL-1-LG-5406 (hereinafter referred to as the offending vehicle) by respondent No.1 Inderpal, legal representatives of deceased Satvir Singh, namely, Smt.Parmeshwari Devi, aged about 51 years – wife, Smt.Manju Devi, aged 31 years – daughter, Rajbir Singh aged 28 years – son, Ashok Kumar aged 25 years – son and Sh.Kanhiya

Lal, aged 86 years - father had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Inderpal – driver, Amit Kumar – owner and Shriram General Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50,00,000/-.

After contest by all the three respondents, the claim petition was partly allowed with costs and compensation to the tune of Rs.32,81,204/- along with interest @ 7.5% per annum from the date of filing of the petition till the date of actual realization was awarded to the petitioner No.1 only, payable by respondents No.1 and 2 absolving the insurance company of its liability for the reason that the deceased had died while travelling in a goods carrier i.e. TATA ACE bearing No.HR47-5171 and since none of his family members had approached the Tribunal with the plea that deceased was a driver, employed by the owner of the ill-fated vehicle and was representative of owner of goods to be transported. It is not pleaded by the claimants that the deceased had hired the truck in question to carry their goods and as a matter of fact the deceased along with others was travelling in the ill-fated truck No.HR-47-5171 as a part of pilgrimage group to go to Haridwar for bringing Holy Gangajal, so fall in the category of gratuitous passenger.

It is pertinent to mention here that claim petition of petitioners No.2 to 4 was dismissed.

The driver and owner were dissatisfied with the said award dated 4.8.2015 and they have filed the present appeal before this Court.

Notice of the appeal was issued to the respondents. Initially respondents No.2 to 6 had appeared through counsel but later on there was no representation on their behalf. However, respondent No.1 – insurance company put in appearance through counsel.

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

The findings recorded by the Tribunal on issue No.1 that respondent No.1 was author of the accident by his rash and negligent driving of the offending vehicle is well reasoned given in light of the facts and circumstances of the case and evidence adduced by the parties on record and do not call for any interference and are hereby affirmed.

With regard to finding on issue No.2, which is relating to the quantum of compensation awarded to the claimants, again the compensation has been awarded keeping in view all the relevant facts i.e. age of the deceased, his probable monthly income after deducting amount towards his personal expenses and income tax payable. The aspect of future prospects has also been taken into consideration. Thus keeping in view the age of deceased, number of dependents upon him, multiplier has been used applying the principle of law as laid down in ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77 .***

However, the amount so awarded under conventional heads seems to be slightly on higher side inasmuch the claimant No.1 has been awarded a sum of Rs.25,000/- for loss of consortium, Rs.20,000/- towards expenses incurred on transportation and last rights of deceased, Rs.20,000/- for loss of estate and Rs.20,000/- towards loss on account of non-pecuniary damages. However, In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, the claimant No.1 is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-.

Thus, the total compensation comes out to Rs.31,96,204 + 70,000 = 32,66,204/-.

The Tribunal has wrongly awarded compensation of Rs.32,81,204/-. The same is reduced to Rs.32,66,204/-. The claimant No.1 would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.32,66,204/-.

Now coming to issue No.4 “Whether the insured has violated the terms and conditions of the insurance policy? OPR(3).

Learned counsel for the appellants has submitted that the Tribunal wrongly absolved the insurance company of its liability to pay compensation when there was no reason to do so. In support of his contention, he has referred to authority ***National Insurance Company Limited Versus Kamlesh and others, 2018(3) Law Herald 2184*** by a Co-ordinate Bench of this Court wherein dealing with a case when the deceased had taken lift in the offending vehicle and the accident had taken place when the deceased was descending from the offending vehicle as its driver drove the the vehicle crushing the deceased, resulting into his death, it was observed that at the time of accident, the deceased was not a passenger, rather a 'third party' as the accident was not caused while he was travelling in the offending vehicle, therefore plea of gratuitous passenger raised on behalf of the appellant – insurer was not accepted.

However, I find that the facts of this authority were distinguishable since as per facts of the present case, the deceased had suffered injuries while he was travelling in the offending vehicle, which according to the version of claimants was driven in a rash and negligent manner by respondent No.1 Inderpal.

Learned counsel for the appellants has further referred to authority ***Darshna Devi Versus Ajit Singh and others, 2014(55) RCR(Civil)657*** by another Co-ordinate Bench of this Court, which was a case where the appellants were travelling in goods vehicle, which dashed against the offending vehicle coming from opposite direction. It was observed that even though driver of the vehicle in which the appellants were travelling acted in violation of his insurance policy by taking them as gratuitous passengers in goods vehicle but he did not contribute to the cause of accident and findings recorded by the Tribunal that offending vehicle was being driven in a rash and negligent manner which caused accident held to be proper and were sustained observing that respondent was rightly held liable to pay compensation jointly and severally. Again facts of this case are different. The driver of the vehicle in which the deceased was travelling has been found to be rash and negligent. He was carrying a gratuitous passenger in a transport vehicle violating the terms and conditions of the insurance policy. Therefore, the insurance company was rightly not found liable to indemnify the claimants with regard to the compensation amount awarded to them by the Tribunal.

One more judgment referred to by learned counsel for the appellants i.e. ***Jahura Bewa & Ors. Versus The New India Assurance Company LTD & Ors., 2012(3) AICJ 511*** by a Division Bench of Calcutta High Court is also not applicable since the victim had died in a road accident while travelling as a gratuitous passenger in a goods vehicle which was insured by National Insurance Company Ltd. and another vehicle was insured with the New India Assurance Company Ltd. The case was found to have been covered under the category of composite negligence and not contributory negligence. Therefore, the insurance company of goods vehicle was also found to be liable being a joint tortfeasor.

The case in hand is certainly not of composite negligence. However, the Tribunal was not justified in allowing respondent insurance company to go absolutely scot free. Under the circumstances, it should have been directed to pay the compensation amount along with interest and cost to the claimants and then recover the same from owner and driver of the vehicle.

In ***Manuara Khatun & Ors Versus Rajesh Kr. Singh & Ors, 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. In 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 & Ors Versus Rajesh Kr. Singh & Ors***(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 the Delhi High Court had since been dismissed. He has referred to order dated 25.10.2018 by the Apex Court in that regard.

Thus the finding recorded by the Tribunal on issue No.4 is modified accordingly. It is directed that respondent - insurance company would pay the compensation amount with interest and cost and thereafter it would be entitled to recover that amount from respondents No.1 and 2 i.e. appellants before this Court by way of filing an execution application before the Tribunal.

With the abovesaid modifications in the award, the appeal stands allowed partly.

28.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**