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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 655 of 2015
Date of decision:11.09.2019

Pappi Devi and others **...Appellants**

V/s.

Bina and others **...Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. A.S. Sheoran, Advocate for the appellants.

Mr. Sanjeev Kodan, Advocate for respondent No. 4/insurance co.

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RITU BAHRI, J. (Oral).

The claimants have come up in appeal against the award of the Tribunal dated 20.10.2014 whereby claim petition under Section 163-A of the Motor Vehicles Act has been dismissed.

A DDR No. 16 dated 21.03.2013 (Ex.P1) was recorded on the statement made by Suresh Kumar son of Himmat Singh and this was proved by PW1 HC Dayanand. In the DDR it was stated that on 21.03.2013 at about 4:30 a.m., deceased Ved Pal was going from his village Balawas towards village Mohammadpur on motor-cycle No. RJ-02-SV-2175 and when he reached near village Mohammadpur, his motorcycle slipped over a *Rodi* and struck against a mule cart coming from the front side and Ved Pal sustained injuries. He was taken to GH, Rewari and he died during treatment.

PW2 Pappi Devi deposed that Ved Pal was her husband. He was having a valid driving licence and was wearing helmet at the time of accident. Her husband was not registered owner of the vehicle and he had borrowed the said vehicle. The accident was further proved by PW2 Lekh Ram who deposed that on 21.03.2013 at about 4:45 a.m., he was going towards village Mohammadpur for morning walk. One Suresh son of Himmat Singh was also going ahead of him and at that time Ved Pal came on motor-cycle No. RJ-02-SV-2175 and his motorcycle slipped and struck against the mule cart of Deen Dayal of village Mohammadpur and was seriously injured. He and Suresh brought Ved Pal to Civil Hospital, Rewari where he died due to the injuries sustained by him. PW4 Suresh Kumar also reiterated the version given by PW3.

Ex.P3 is the post mortem report of Ved Pal which shows that the deceased was 45 years of age at the time of his death and the compensation has been assessed taking his income as Rs.3,300/- p.m., which is as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income	3,300/-p.m.
(ii)	1/3rd deduction for personal expenses	3300-1100=Rs.2,200/-
(iii)	Annual loss of dependency after applying multiplier of 13	2,200X12X13=Rs.3,43,200/-
(iv)	Loss of estate	Rs.2,500/-
(v)	Funeral expenses	Rs.2,000/-
(vi)	Loss of consortium	Rs.5,000/-
	TOTAL	**Rs.3,52,700/-**

However, keeping in view the judgment of Hon'ble the Surpeme Court in ***Ningamma and another V/s. United India Insurance Co. Ltd.2009(2) Accident & Insurance Claims Journal 128,*** the claim petition was dismissed as Ved Pal was the borrower of the vehicle and he had stepped into the shoes of the owner of the vehicle and claim petition under Section 163-A was not maintainable.

Learned counsel for the appellants has referred to Supreme Court judgment in ***Oriental Insurance Co. Ltd. V/s. Rajni Devi and others, (2008) 5 SCC 736*** to contend that as per the terms of the insurance policy Ex.RW1/B, an amount of Rs.50/- has been paid as additional premium towards owner and driver and after making payment of extra premium, claim petition cannot be dismissed.

Heard learned counsel for the parties. After going through the award, another point for consideration in the present appeal is that the accident had taken place when Ved Pal was going on motorcycle No. RJ-02-SV-2175 and when he reached near village Mohammadpur, his motor cycle struck against a mule cart. In the above facts, there is no accident with the another vehicle and the motorcycle struck against the mule cart. In this backdrop, even the claim petition under Section 163-A of the Act was not maintainable. This Court in the case of ***FAO No. 6895 of 2015 National Insurance Company Limited V/s. Gurmel Kaur and others*** had examined a case whether the accident took place when the front right tyre of the car was suddenly punctured and car became out of control and struck in the right side kikkar tree and one Amrik Singh had suffered grievous injuries and eventually he died and the judgment of ***Harmesh Kumar @ Ramesh Kumar V/s. Inderjit Singh and others 2014(3)RCR (Civil) 408*** was referred in this case whereby it was held that the driver must have driving skills to save himself from the situation of collusion and negligence cannot be attributed to any person other than a human agency. Since the car went out of control on account of the fact that right tyre suddenly got punctured, the claim petition filed by the legal heirs of Amrik Singh was maintainable against the driver i.e. Nazam Singh and the Court while exercising its inherent revisional powers converted the claim petition under Section 166 of the Motor Vehicles Act and the compensation was assessed keeping in view the judgment passed by the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017).

A further reference can be made in the case of ***FAO No. 2492 of 2002 Sudesh Sharma and others V/s. Prahlad Kumar Garg and another,*** wherein it is held that conversion of petition from Section 163-A to 166 cannot be resisted by an insurer on a plea that such a conversion would result in undertaking a larger slice of liability if the negligence is established.

Keeping in view the above, this appeal is allowed as in the present case, Ved Pal was driving motorcycle No. RJ-02-SV-2175 and struck against a mule cart. He stepped into the shoes of the owner and after making payment of extra premium, the claim petition can be converted under Section 166 of the Act. Hence, the claim petition is converted under Section 166 of the Act while exercising its inherent revisional powers and the compensation is hereby assessed taking the income of the deceased as Rs.5,500/- p.m. keeping in view the minimum wages prevalent in State of Haryana in 2013 and in view of the judgments passed by Hon'ble the Supreme Court in ***Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others,*** Civil Appeal No. 9581 of 2018 and ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Annual Income	5500X12=Rs.66,000/-

(ii)	25% increase as future prospects	66,000+16,500=Rs.82,500/-
(iii)	1/3rd deduction for personal expenses	82500-27500=Rs.55,000/-
(iv)	Total loss of dependency after applying multiplier of 13	55,000X13=Rs.7,15,000/-
(v)	Funeral expenses	Rs.15,000/-
(vi)	Loss of estate	Rs.15,000/-
(vii)	Loss of filial consortium	Rs.1,20,000/- (Rs.40,000/- each to all the appellants)
	TOTAL COMPENSATION AWARDED	**Rs.8,65,000/-**

The liability to make the payment of compensation shall be of all the respondents jointly and severally. However the first liability shall be of respondent No.4-insurance company and shall recover the amount from respondents No. 1 to 3. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others,*** Civil Appeal No. 4528 of 2019.

(RITU BAHRI)
JUDGE

11.09.2019
Divyanshi

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