IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-7037-2015(O&M)

The Oriental Insurance Company Ltd.

...Appellant

Versus

Gurmail Singh and others

...Respondents

(2) FAO-2283-2016(O&M)

Gurmail Singh and others

...Appellants

Versus

Parvinder Singh and others

...Respondents

Date of Decision:-25.7.2019

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

Present: Mr.Aman Jaiswal, Advocate
for the appellant – insurance company
in FAO-7037-2015 and for respondent No.3 – insurance company in FAO-2283-2016.

Mr.Pankaj Katia, Advocate
for the appellants in FAO-2283-2016 and for respondents No.1 to 3 in FAO-7037-2015.

Mr.Abhishek Singla, Advocate

for respondent No.4 in FAO-7037-2015 and
for respondent No.1 in FAO-2283-2016.

Ms.Jyotika, Advocate for
Ms.Ritu Punj, Advocate
for respondent No.5 in FAO-7037-2015 and
for respondent No.2 in FAO-2283-2016.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-7037-2015 filed on behalf of appellant -Insurance company and FAO-2283-2016(O&M) filed on behalf of appellants – Gurmail Singh and others, which have arisen out of the same accident.

Briefly stated facts of the case are that as a result of Shinder Kaur @ Chhinder Kaur meeting her end in a road side accident, which took place on 19.5.2013 in the area in front of Sportking Factory, Jida, statedly due to rash and negligent driving of Bolero Mini Truck bearing Chassis No.D3C33107 and engine No.GLD4C-57086 (hereinafter referred to as the offending vehicle) by Parvinder Singh – respondent No.1, the petitioners/claimants i.e. Gurmail Singh, aged about 36 years – husband, Master Gurdeep Singh @ Gippu, aged about 13 years – minor son and Ms.Gurpreet Kaur, aged about 19 years – daughter of the said Shinder Kaur @ Chhinder Kaur had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Parvinder Singh – driver, Sukhdev Singh – owner and Oriental Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.25 lacs along with interest.

Notice of the claim petition was given to the respondents, who put in appearance and offered a contest.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing learned counsel for the parties, learned Motor Accidents Claims Tribunal, Bathinda vide Award dated 10.8.2015 allowed the claim petition partly and granted compensation of Rs.5,96,000/- along with interest @ 7.5% per annum from the date of filing of the petition till actual realization to the claimants in equal shares payable by respondent No.3 – insurance company.

The appellants/petitioners/claimants being of the view that the compensation awarded was on lower side, have approached this Court by way of filing an appeal seeking enhancement of compensation.

On the other hand, respondent No.3 – insurance company feeling that the amount of compensation awarded is on the higher side has also filed an appeal.

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

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

The Tribunal considering the facts and circumstances of the case in light of the evidence adduced by the parties has decided issue No.1 in favour of the claimants and against the respondents holding that respondent No.1 was the author of the accident by his rash and negligent driving of the offending vehicle. Such finding is proper and appropriate and does not call for any interference.

Next coming to issue No.2, the Tribunal had taken age of deceased to 35 years, assessed her monthly income as Rs.4,500/- being an unskilled worker employed with Sportking Factory, Zida, Bathinda. However, no addition towards future prospects was made.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.4,500 + 1800 = Rs.6,300/-.

No doubt, a woman does contribute to the family by doing household chores including cooking, cleaning utensils, washing clothes and managing the household affairs and it is difficult to quantify such services rendered by a household lady to the family, however, a reasonable amount is to be taken in that regard. In ***Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR(Civil) 673***, the Apex Court had evaluated the contribution of a household wife at Rs.3,000/- per month. It was an accident, which took place in 1989. In a judgement passed by a Co-ordinate Bench titled ***Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand and Ors., 2015(4) PLR 405***, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title ***Manphool & others Versus Anil and others*** decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per month. In FAO-5627 of 2014 having title ***Brahmanand and others Versus Rajesh Kumar and others*** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.6,000/- per month.

It has to be taken into view that the deceased was doing household work also and some amount in that regard needs to be added towards her monthly income considering her services to the family on account of household chores. Thus, a sum of Rs.3,000/- is also added to the monthly income of the deceased.

Doing that the total monthly income of the deceased comes out to Rs.6,300 + 3000 = 9,300/-.

In this case the Tribunal has rightly deducted 1/3rd of the amount towards self expenses in terms of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77.*** Doing that the dependency of claimants comes out to Rs.6,200/- per month, annual dependency comes out to Rs.6200 x 12 = Rs.74,400/-.

The Tribunal has used multiplier of 16, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.74,400 x 16 = 11,90,400/-.

The Tribunal further awarded compensation of Rs.10,000/- towards funeral expenses and Rs.10,000/- towards love and affection. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are 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/-. The total compensation comes out to Rs.11,90,400 + 70,000 = 12,60,400/-.

The Tribunal has awarded compensation of Rs.5,96,000/-.

In this way, the enhanced amount comes out to Rs.6,64,400/- (12,60,400 - 5,96,000). 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.6,64,400/- payable by respondent No.3 – insurance company.

With such modification, the FAO-2283-2016 filed on behalf of the claimants is allowed partly with costs.

Although learned counsel for the insurance company has raised an argument that respondent No.1 was not possessing a valid and effective driving licence at the time of accident, therefore the insurance company is not liable to pay any compensation amount. However, this aspect has been dealt at length by the Tribunal in para No.12, which for ready reference is reproduced as under:

> *12. RW2 Ashok Kumar Clerk, DTO Office, Moga brought record driving licence Ex.RX pertaining to respondent No.1 Parvinder Singh. The said licence was valid from 13.5.2010 to 22.4.2033. When he was cross examined, he stated that this licence was valid for LMV, LMV/Cab and Transport vehicles. Mini truck is transport vehicle. So respondent No.1 was having valid driving licence at the time of accident. Therefore, respondent No.3 insurance company has no*

recovery rights from respondents No.1 and 2. The insurance policy Ex.RZ pertaining to Bolero Mini Truck bearing Chassis No.D3C33107 and Engine No.GLD4C-57086 is brought on record, which was valid w.e.f. 26.3.2013 to 25.3.2014 and this accident took place on 19.5.2013. So respondent No.2 i.e. owner of offending vehicle was having valid insurance policy at the time of accident. So respondent No.3 insurance company has no right to recover compensation amount from respondents No.1 and 2. So claimant No.1 to 3 are entitled to recover above said amount of compensation from respondent No.3 insurance company. Both these issues are decided partly in favour of claimants and against the respondents.

Furthermore, learned counsel for the claimants has referred to authority ***Mukund Dewangan Versus Oriental Insurance Company Limited, 2017(4) RCR(Civil)111*** wherein it has been held that when a driver is holding a licence to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle.

Consequently, FAO-7037-2015(O&M) filed on behalf of the insurance company stands dismissed.

25.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No