In the High Court of Punjab and Haryana at Chandigarh

FAO- 7541 of 2015(O&M)
Date of Decision: 14.2.2019

Bajaj Allianz General Insurance Company Limited

---Appellant

versus

Meena Kumari and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. J.S.Chatrath, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant

Mr. Ashok Kumar, Advocate,
for respondent No. 1

None for respondents No. 2 and 3

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Rekha Mittal, J.

The present appeal directs challenge against award dated 3.8.2015 passed by the Motor Accidents Claims Tribunal, Jind (in short "the Tribunal") whereby compensation has been assessed on account of death of Ramesh Kumar in a motor vehicular accident that took place on 18.3.2014.

Counsel for the insurance company would inform that appeal has been preferred to assail quantum of compensation assessed by the Tribunal and entitlement of the insurance company to have recovery right against the insured as the vehicle was being used in violation of terms and conditions of the insurance policy.

With regard to quantum of compensation, it is argued that as the deceased was an employee of Haryana Government and his family would be entitle to financial assistance under **the Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006 (in short "2006 Rules")** as deposed by Amit Kumar, Clerk, Public Health Division, Jind PW3, amount paid under the Rules of 2006 is liable to be deducted out of assessed compensation in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Company Limited vs. Shashi Sharma and others 2016 (4) RCR (Civil) 569.**.

To bring home his contention with regard to the insured having violated the terms and conditions of the policy, it is argued that the policy in question Ex. R4 is a private package policy but at the time of occurrence, the vehicle was being used for hire or reward, as is clear from the facts elicited in cross examination of Hari Kishan PW2 brother of Ramesh Kumar examined to prove the accident.

Counsel representing the claimant-respondent No. 1, on the contrary would urge that adequate compensation may be allowed by extending benefit of future prospects on the basis of age of the deceased. It is further argued that deduction for personal expenses should be 1/3rd in place of 50%.

There is no representation on behalf of respondents No. 2 and 3 despite service.

The Tribunal has awarded compensation of Rs. 31,88,380/-, detailed hereunder:-

Monthly income of the deceased	Rs. 23,360/-
Addition in income for future prospects	30%
Deduction for personal expenses	1/3rd
Multiplier	13
Loss of dependency	Rs. 31,58,376/-
Loss of consortium	Rs. 25,000/-
Funeral Expenses	Rs. 2500/-
Loss of estate	Rs. 2500/-

Amit Kumar, Clerk, Public Health Division, Jind PW3 was examined to prove employment and salary of the deceased who would depose that the deceased was working as Mali-cum-Chowkidar and he had drawn his last salary till 18.3.2014. He has produced on record documents Exs. P1, P2 and P2/A. The deceased was born on 30.12.1968 and he joined government service on 1.4.1993. In his cross examination, he would depose that widow of Ramesh Kumar is being paid same salary after deduction of allowances as per order dated 30.4.2014 which shall be payable to her for 12 years. Certificate in that regard is Ex. RA recording payment of Rs. 22,339/- to Meena Kumari as financial assistance.

The Tribunal has rightly taken into consideration salary of the deceased at Rs. 23,360/- per month for computing loss of dependency and added 30% for future prospects as the deceased was slightly more than 45 years of age at the time of occurrence. As the deceased was less than 46 years of age rather 3-4 months more than 45 years, admissible multiplier would be 14. Deduction for personal expenses is allowed to the tune of 1/3rd. In this context, reference can be made to judgment of this court **National Insurance Company Limited vs. Kushila Devi and others FAO**

No. 6497 of 2017 decided on 28.9.2017. Accordingly, loss of dependency is calculated at Rs. 34,01,216/- [23,360 x 12 x 14=39,24,480 + 11,77,344 (30%)= 51,01,824 - 17,00,608(1/3rd).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimant shall be entitle to Rs. 70,000/- 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,** detailed hereunder:-

Loss of consortium	Rs. 40,000
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 34,71,216/-.

This brings the court to financial assistance available to widow of deceased under the 2006 Rules. As per testimony of PW3, widow is being paid @ Rs. 22,339/- per month and financial assistance would be available for a period of 12 years. The total amount comes to Rs. 22,339 x 12 x 12 = 32,16,816/-and only 50% shall be liable to be deducted in the light of judgment of this Court **Kamla Devi and others vs. Sahib Singh and others FAO No. 3064 of 2013 decided on 30.11.2017** affirmed by Hon'ble the Supreme Court**.** After deducting 50% of the amount, net compensation payable to the claimant is **Rs.18,62,808/-** [34,71,216-16,08,408] and compensation awarded by the Tribunal is reduced to the extent of Rs.13,25,572/- [31,88,380-18,62,808]. The insurance company is entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

Coming to the question of entitlement of the insurance company to recover the amount from the insured for violation of terms and conditions of the insurance policy, the insurance company raised a specific plea in the written statement that vehicle in question was being used for hire or reward. Plea of the insurance company in this regard gets corroborated from testimony of Hari Kishan PW2 who admitted in his cross examination that Cruiser jeep was having about 20-22-24 passengers and they had paid Rs. 10/- per passenger. Perusal of the policy would reveal that it was a private package policy and there was a specific condition under the head 'Limitation to use' that the vehicle would not be used for hire or reward. As in the case at hand, the vehicle was being used for commercial purpose, the insured is guilty of violating the terms and conditions of the insurance policy, thus, the insurance company is entitle to have right of recovery against the insured, after payment of compensation to the claimant/respondent No. 1.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.2.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No