IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-2354-2010(O&M)

Jagdish and another

...Appellants

Versus

Smt.Kirosta Devi and others

...Respondents

(2) FAO-2358-2010(O&M)

Jagdish and another

...Appellants

Versus

Oriental Insurance Co. Ltd. and others

...Respondents

(3) FAO-5671-2010(O&M)

Smt.Kirosta Devi and others

...Appellants

Versus

Jagdish and others

...Respondents

Date of Decision:-10.4.2019

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

Present: Mr.Ashwani Arora, Advocate
for the appellants in FAO-2354-2010 and FAO-2358-2010 and for respondents No.1 and 2 in FAO-5671-2010 .

Mr.Sandeep Kumar Yadav, Advocate
for the respondents No.1 to 5 in FAO-2354-2010 and for the appellants in FAO-5671-2010.

Mr.Akshat Mittal, Advocate for
Mr.Sachin Mittal, Advocate for respondents No.2 to 6 in

FAO-2358-2010.

Mr.Vinod Gupta, Advocate
for the Insurance Company.

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H.S. MADAAN, J.

By this order, I shall dispose of three FAOs i.e. FAO-2354-2010, FAO-2354-2010 filed on behalf of appellants – Jagdish and another and FAO-5671-2010 filed on behalf of appellants/claimants Kirosta Devi, which have arisen out of the same accident.

Briefly stated, facts of the case as per the version of the claimants are that on 19.9.2008, Karan Singh along with Ved Parkash son of Chander singh, resident of village Bass Lambi, Usharif son of Mohammad Yanish, resident of Dhampur, District Bijnor(U.P.) were travelling in a Maruti Alto car bearing registration No.HR26-AF-3877; that they were going from Farukh Nagar to Bass Kusla; that the car in question was being driven by Ved Parkash in a very cautious manner and at a moderate speed, on the extreme left side of the road; that at about 4/4:30 p.m. when the said Maruti Alto car was within revenue estate of village Khaitawas, in front of a hotel, in the meanwhile, a truck having registration No.HR-63-B-2631 (hereinafter referred to as the offending vehicle) driven by respondent No.1 – Jagdish in a rash and negligent manner came from the opposite side and while going on the wrong side of the road, hit the Maruti Alto car, as a result of which, the occupants of the car received multiple injuries and Ved Parkash as well as Karan Singh succumbed to those injuries; that injured Usharif was rushed to hospital for treatment; that Maruti Alto car was grossly damaged; that after the accident, respondent No.1 – Jagdish ran away from the spot; that formal FIR No.156 dated 19.9.2008, under Sections 279, 427, 304-A IPC regarding the accident was recorded against driver of the offending vehicle with Police Station Farukh Nagar.

Smt.Kirosta Devi – wife, Master Ashok – minor son, Ms.Shikha – minor daughter, Sh.Ramjiwan – father and Smt.Mewa Devi – mother of Karan Singh, an unfortunate victim of road side accident had brought a claim petition bearing MACT Case No.241 of 2008 under Section 163-A of the Motor Vehicles Act against respondents i.e. Jagdish – driver, Ajay Singh – owner and Oriental Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.60 lacs.

The legal representatives of Ved Parkash, who had lost his life in that very accident, namely Smt.Sharmila, aged about 28 years – widow, Master Tilak Raj and Master Mohit – minor sons, Baby Komal – minor daughter and Smt.Brahma Devi – mother had also brought a claim petition bearing MACT Petition No.66 of 2008 under Section 166 of the Motor Vehicles Act against those very respondents claiming compensation to the tune of Rs.20 lacs.

After contest, the claim petitions were allowed by Tribunals and award dated 12.1.2010 in MACT Petition No.66 of 2008 and award dated 29.3.2010 in MACT Case No.241 of 2008 were passed and compensation of Rs.5,28,400/- with interest @ 6% per annum from the date of the claim petition till realization besides costs of the petition was awarded in MACT Petition No.66 of 2008 to claimants Smt.Sharmila and others. It was further mentioned that at first instance the awarded amount shall be paid by respondent No.3 – insurance company to satisfy the award and then respondent No.3 – insurance company would be at liberty to recover the same from the respondents No.1 and 2.

Further compensation of Rs.7,00,000/- with interest @ 8% per annum from the date of the claim petition till realization besides costs of the petition was awarded in MACT Case No.241 of 2008 to claimants Smt.Kirosta Devi and others. However, the liability to pay the compensation was found to be that of respondents No.1 and 2 only and not of respondent No.3 – insurance company.

The driver and owner of both the petitions being dissatisfied with the said Awards and claimants Smt.Kirosta Devi and others being dissatisfied with Award dated 29.3.2010 passed in MACT Case No.241 of 2008 have filed separate appeals before this Court.

Notices 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.

First coming to **FAO-5671-2010** filed by appellants/claimants Smt.Kirosta Devi and others. The Tribunal has taken the age of deceased Karan Singh to be 37 years considering that as per voter card Ex.P5 prepared in the year 1995, the age of deceased Karan

Singh at that time was 24 years. As per the case of the claimants, the deceased Karan Singh was running a *DHARAM KANTA* i.e. weighing bridge in the name and style of Shankar Dharam Kanta in the revenue estate of village Bass Kusla. They had led evidence in that regard. The Tribunal had discussed that evidence observing that total collection for weighing various vehicles was about Rs.18,000/- per month, then considering the fact that the premises were on lease with the deceased, after making deduction of Rs.8,500/- as rent the remaining amount was found to be 10,000/- however income of the deceased was taken to be Rs.4,500/- per month. It is difficult to understand that in the year 2008 somebody would run business of weighing bridge just drawing income of Rs.4,500/- per month. Taking realistic view of the matter, considering the wages drawn by the manual labourers even, at least a sum of Rs.10,000/- should have been taken as income of the deceased. The mistake committed by the Tribunal is rectified and monthly income of deceased is taken to be Rs.10,000/-. Since there is nothing on record to show that he was an income tax payee and leading luxurious life, his income is taken as Rs.10,000/- and not more than that.

However, no addition was made by the Tribunal towards future prospects. 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.10,000 + 4,000 = Rs.14,000/-.

The deduction of 1/4th of the amount is to be made towards personal expenses in terms of the ratio 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.10,500/- per month, annual dependency comes out to Rs.10,500 x 12 = Rs.1,26,000/-.

Keeping in view the age of the deceased, multiplier of 16 is required to be used in terms of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.***(supra). Doing that the compensation payable comes out to Rs. 1,26,000 x 16 = 20,16,000/-.

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. 20,16,000 + 70,000 = 20,86,000/-.

The Tribunal has awarded compensation of Rs.7,00,000/-.

In this way, the enhanced amount comes out to Rs.13,86,000/- (20,86,000 - 7,00,000). 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. 13,86,000 /-. The other terms and conditions except liability to pay the compensation given in the award shall apply to the enhanced amount as well.

Thus **FAO-5671-2010** filed by appellants/claimants

Smt.Kirosta Devi and others stands partly allowed.

Now coming to the FAO-2354-2010(O&M) and FAO-2358-2010(O&M) filed on behalf of driver and owner of the offending vehicle.

In MACT Case No.241 of 2008 titled 'Smt.Kirosta Devi and others Versus Jagdish and others' decided by Sh.Rajesh Malhotra, Presiding Officer, Motor Accidents Claim Tribunal, Narnaul, he had fastened the liability upon the owner and driver of the offending vehicle for the reason that at the time of accident respondent NO.1 – Jagdish was not holding any valid and effective driving licence and driving licence was obtained by him after the alleged accident. However, these observations by the Tribunal are not supported by the record. The Tribunal had not framed any specific issue as to whether respondent No.1 was not having a legal and valid driving licence at the time of the accident since respondent No.3 insurance company had taken preliminary objection No.6 in the written statement that '*the driver of vehicle No.HR-63G-2631 did not possess valid driving licence at the time of alleged accident as such answering respondent was not liable to pay any compensation.*' Thus it was incumbent upon the insurance company to prove that fact. However, not only the Tribunal failed to frame specific issue in that regard putting the onus on the insurance company to prove such assertions, the insurance company also failed to bring any cogent and convincing evidence to prove such assertions. Rather the respondent – insurance company did not lead any evidence in rebuttal to the evidence produced by the claimants. Respondents No.1 and 2 had closed their evidence after tendering documents Ex.R1 to Ex.R3. If the insurance company wanted to establish on record that respondent No.1 Jagdish was not having a valid and effective driving licence at the time of accident or that driving licence was obtained by him after alleged accident or that in fact he had moved an application for issuing driving licence on 11.9.2008 whereas licence was released to him on 6.10.2008, it could have summoned some official from the office of DTO concerned along with record but it was not so done. The Tribunal just by perusal of the documents placed on record by respondents No.1 and 2 jumped to the conclusion that respondent No.1 was not having a valid and effective driving licence at the time of accident. Much of the reasoning given to reach such conclusion is based on conjectures and surmises not supported by the evidence on file. With insurance company having failed to establish this fact that respondent No.1 was not having a legal and valid driving licence to drive the offending vehicle at the time of accident, the Tribunal was not justified in returning a finding that terms and conditions of insurance policy were violated absolving the insurance company of its liability to pay compensation. Such conclusion is obviously wrong and is not sustainable. Thus, **FAO No.2354 of 2010** filed by Jagdish (driver) and Ajay Singh (owner) has merit and the Award bearing MACT Case No.241-2008 titled '*Smt.Kirosta Devi and others Versus Jagdish and others*' passed by Sh.Rajesh Malhotra, Presiding Officer, Motor Accidents Claims Tribunal, Narnaul stands modified holding all the three respondents to be liable jointly and severally to pay the compensation to the claimants as allowed by this Court in FAO-5671-2010, with the observations that respondent No.3 had failed to establish that on account of alleged violation of terms and conditions of the insurance policy, it stood absolved of its liability to indemnify the insured with respect to the compensation paid/payable by him to the claimants under the award.

Interestingly, while disposing of MACT Petition No.66 of 2008 titled 'Smt.Sharmila and others Versus Jagdish and others' on 12.1.2010 by Sh.S.K. Gupta, Motor Accidents Claims Tribunal, Gurgaon, which was on account of death of Ved Parkash in the same very accident, in which Oriental Insurance Company Ltd. was also a party as respondent No.3, it had taken up a plea that respondent – driver was not holding an effective and valid driving licence at the time of accident. No specific issue in that regard had been framed. Though a vague and omnibus issue was framed as under:

ISSUE No.3

Whether the respondents are not liable to pay the compensation in view of preliminary objections taken by them in their written statements? OPR.

In para No.6 of that award while referring to the evidence available on the file, the Tribunal came to the conclusion that respondent No.1 was holding a valid licence. It is difficult to understand as to how it came out to be so. Two claim petitions arising out of the same accident, the Tribunal coming to different conclusion with regard to respondent No.1 having a legal and valid driving licence at the time of accident. But in that case the insurance company was not fully absolved of its liability to pay compensation but recovery rights were granted tot he insurance company for the reason that the offending vehicle was being plied without valid route permit.

Whereas in MACT Case No.241 of 2008 no such finding had been recorded. The observations by the Tribunal that the offending vehicle was being plied without a valid route permit are also not supported by evidence on the file. It may be mentioned here that no specific issue in that regard had been struck by the Tribunal. Even if, it is taken that insurance company had taken up a plea in that regard then onus was upon the insurance company to bring cogent and convincing evidence to substantiate those allegations. However in that case also, the insurance company had failed to bring positive evidence and the Tribunal had based its findings solely for the reason that vide order dated 16.11.2009, a direction was issued to respondents No.1 and 2 to supply the copy of route permit of offending vehicle to respondent No.3 – insurance company for verification but respondents No.1 and 2 did not comply with the directions, meaning thereby that offending vehicle was being plied without a valid route permit since had there been a valid route permit, the copy thereof would have been supplied by respondents No.1 and 2 to respondent No.3 – insurance company. The whole approach by the Tribunal was misconceived and erroneous. No such presumption could validly be raised under circumstances of the case. The insurance company was bound to discharge the burden of proof placed upon it and without such burden being discharged by the insurance company merely by presumptions, the Tribunal jumped to the conclusion that the offending vehicle was being plied without valid route permit. As such it was not established on record that the terms and conditions of the insurance policy stood followed for the said reason and recovery rights could not be granted to insurance company under the circumstances.

Thus, **FAO No.2358 of 2010** filed by Jagdish (driver) and Ajay Singh (owner) has merit and the Award bearing MACT Petition No.66 of 2008 titled 'Smt.Sharmila and others Versus Jagdish and others' decided on 12.1.2010 by Sh.S.K. Gupta, Motor Accidents Claims Tribunal, Gurgaon stands modified holding all the three respondents to be liable jointly and severally to pay the compensation to the claimants.

10.4.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No