IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 969 of 2015 (O&M)
Date of decision : 30.10.2019

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United India Insurance Co. Ltd.

................Appellant

vs.

Jaswinder Kaur and others

.................Respondents

2) FAO No. 723 of 2015 (O&M)
and Cross Objection No. 146-CII of 2015

...

United India Insurance Co. Ltd.

................Appellant

vs.

Sunita Devi and others

.................Respondents

**Coram: Hon'ble Mr. Justice H. S. Madaan**

Present: Mr. D.P. Gupta, Advocate for the appellant – Insurance company

Mr.G.C. Shahpuri, Advocate for the cross objector-respondents No.1 to 5 in FAO 723-2015

Mr. Satnam Singh Sishodia, Advocate for
Mr. Ravinder Malik, Advocate for
respondents No. 6 and 7 in FAO 723-2015

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**H. S. Madaan, J.**

By this common judgment, I intend to dispose of two appeals i.e. bearing FAO No. 969 of 2015 titled as 'United India Insurance

Co. Ltd. vs. Jaswinder Kaur and others ' and FAO No. 723 of 2015 titled as having title 'United India Insurance Co. Ltd. vs. Sunita Devi and others', as both these appeals have arisen out of the same award.

Briefly stated, facts of the case as per version of the claimants are that on 25.10.2012, deceased Bisakhi Ram alongwith his nephew deceased Kimti Lal were going to village Kulchandu on new motorcycle make Bajaj Paltina to meet a close relative. At about 10.45 a.m. when they took a turn towards village Maheshri, then a bus bearing registration No. HR 58B-2488, belonging to Zimidara Transport Co-operative Society Ltd., Sadhaura, Tehsil Bilaspur, District Yamuna Nagar, being driven by Karam Chand -respondent No.1, in a rash and negligent manner, struck against the motorcycle. Resultantly, both the riders of the motorcycle fell down and their heads got crushed under the wheel of the bus. Both of them died at the spot. The accident was witnessed by Samay Singh and Kapil Kumar. On getting information regarding the accident, Shish Pal son of Bachna Ram, a close relative of the deceased, reached at the spot and FIR No. 227 dated 25.10.2012 for offences under Sections 279, 304-A IPC was registered regarding the accident with Police Station Chhappar. Postmortem examination on the dead bodies of both the deceased was conducted at Civil Hospital, Jagadhari.

Legal representatives of both the deceased i.e. of Bisakhi Ram, namely his widow Smt. Sunita Devi aged abouth 35 years, daughters Mamta Rani and Reena Rani, son Jauni Lal and minor daughter Kavita, had brought a claim petition under Section 166 of the Motor Vehicle Act, 1988 (hereinafter to be referred as 'the Act'), bearing MACT No. 16 of 2013, against respondents i.e. Karam Chand – driver, Zimidara Transport Co-operative Society Ltd., Sadhaura, Tehsil Bilaspur, District Yamuna Nagar – owner and United India Insurance Company Ltd., Ambala city – Insurer of bus No. HR 58B-2488 (hereinafter to be referred as 'the offending bus'). As per case of the claimants, Bisakhi Ram was aged about 40 years and was earning Rs.15,000/- per month by cultivating land of his father and in addition to that growing vegetables and selling the same as well as the milk. All the claimants were dependent upon his earnings. The claimants had asked for grant of Rs.30 lacs, as compensation.

Similarly, legal heirs of Kimti Lal namely his widow Smt. Jaswinder Kaur, mother Shiksha Devi, father Jang Bahadur and minor daughter baby Sanjana, had brought a claim petition under Section 166 of the Act, bearing MACT No. 17 of 2013, against those very respondents, also claiming compensation of Rs.30 lacs. As pleaded by such claimants, Kimti Lal was aged about 28 years and was employed as Technician in Kandhari Beverages, village Saha, getting Rs.15,000/- per month and all the claimants were dependent upon his earnings.

On being put to notice, all the three respondents had appeared in both the claim petitions. Respondents No. 1 and 2 had filed a joint written statement, raising various legal objections, on merits denying that the bus in question was involved in any accident, as such contending that they are not liable to pay any compensation to the claimants. It was however submitted that the vehicle in question was insured with respondent No.3 – Insurance company at the relevant time.

In the written statement filed by respondent No.3 – Insurance company, it had taken up various legal objections, including one with regard to maintainability of the claim petition. It took up various statutory defences to wit, that driver of the offending bus was not having any valid and effective driving license at the time of accident and the bus was being plied in willful violation of the provisions of the Motor Vehicle Act and terms and conditions of the insurance policy, thus absolving of its liability to pay the compensation. All the three respondents prayed for dismissal of the claim petition in both the cases.

Since both the claim petitions had arisen out of the same accident, those were consolidated and consolidated issues were framed, vide order dated 26.11.2013, as follows :-

1) Whether the accident dated 25.10.2012 resulting into death of Biskhi Ram son of Shri Ram Sarup and Kimti Lal son of Shri Jang Bahadur had occurred due to rash and negligent driving of bus No. HR 58B-2488 by respondent No.1 ? OPP
2) If issue No.1 is proved in affirmative, what amount of compensation and from whom the claimants in claim petition titled as Sunita Devi and others vs. Karam Chand etc. are entitled to ? OPP

3) If issue No.1 is proved in affirmative, what amount of compensation and from whom the claimants in claim petition titled as Jaswinder Kaur and others vs. Karam Chand etc. are entitled to ? OPP
4) Whether the bus bearing No. HR 58B-2488 was being driven in contravention of the provisions of the Insurance Police, if so its effect? OPR3
5) Relief.

Parties led evidence in support of their respective claims. Claimants in order to prove their case, examined Navdeep Singh, HR Manager, Kandhari Beverages Pvt. Ltd. As PW-1, claimant Smt. Sunita Devi appeared in the witness box as PW-2, claimant Shiksha Devi appeared in the witness box as PW-3 and further examined Kapil eye witness of the accident as PW-4. After tendering certain documents, the claimants closed their evidence.

On the other hand, respondents No.1 and 2 tendered certain documents and closed their evidence. Respondent No.3 did not produce any evidence despite sufficient opportunities. Therefore, evidence of respondent No.3 was closed by order of the Tribunal on 2.12.2014.

After hearing the arguments, the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter to be referred as 'the Tribunal'), decided issues No.1, 2 and 3 in favour of the claimants and against the respondents. Issue No. 4 was decided against respondent No.3. Both the claim petitions were accepted , vide award dated

2.12.2014 and in claim petition bearing MACT No. 16 of 2013, by Sunita Devi etc. compensation of Rs.9,17,000/- with interest @ 7.5% per annum was granted to the claimants payable by all the three respondents jointly and severally, from the date of filing of claim petition till actual realisation. Whereas in claim petition bearing MACT No. 17 of 2013, by Jaswinder Kaur etc. compensation of Rs.14,14,790/- with interest @ 7.5% per annum was granted to the claimants payable by all the three respondents jointly and severally, from the date of filing of claim petition till actual realisation. The necessary directions with regard to apportionment and mode of payment were given in the award.

The Insurance company felt aggrieved by the award and has challenged the same by way of filing two appeals, against Jaswinder Kaur etc. bearing FAO No. 969 of 2015 and against Sunita Devi etc. bearing FAO No. 723 of 2015. It may be mentioned here that in FAO No. 723 of 2015, the claimants have preferred cross objections, seeking enhancement of compensation awarded to the claimants by the Tribunal.

Notice of the appeals was given to the respective respondents, respondents in FAO 723 of 2015 have put in appearance through their respective counsel.

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

Learned counsel for the appellant – Insurance company has argued that the findings recorded by the Tribunal that the accident had taken place on account of rash and negligent driving of the offending bus by respondent No.1 Karam Chand is wrong, in as much as, the claimants were unable to bring any cogent and convincing evidence on the record to warrant such finding. Therefore, the claim petitions were wrongly allowed when they deserve to be dismissed.

Learned counsel for the respondents- claimants has countered the arguments submitting that the claimants had brought enough cogent and convincing evidence on record to show that respondent No.1 Karam Chand was author of the accident by his rash and negligent driving of the offending bus and the verdict recorded by the Tribunal on issue No.1 is proper and appropriate and does not call for any interference.

After hearing counsel for the parties, I find that the contentions put forward by learned counsel for the appellant – Insurance company are devoid of any merit. The claimants had examined PW-4 Kapil, who had provided eye witness account of the accident, deposing in consonance with the case of the claimants. Though he was cross examined on behalf of the respondents, but he stood his ground well and could not be shattered on any material point. The account of the accident given by him seems to be cogent and convincing and worthy of reliance. His presence at the spot also comes out to be natural and probable. The claimants have further proved in evidence FIR No. 227 dated 25.12.2012, for offences under Sections 279, 304-A IPC registered with Police Station Chhappar, on statement of Shish Pal, copy of which is Exhibit P-2, copy of final report under Section 173 Cr.P.C. Exhibit P-6, copy of charge sheet Exhibit P-5, copies of postmortem reports of the deceased Exhibits P-3 and P-4. The fact that FIR regarding the accident had been registered and during the course of investigation, Karam Chand was arrested for causing accident by his wrongful driving and then on completion of investigation, he has been sent up to face trial, he has been charge sheeted accordingly and trial against him is going on, goes a long way in proving the case of the claimants. The evidence adduced by the claimants has virtually gone un-rebutted. Respondent No.1 did not step into the witness box to state that he had not caused the accident by his rash and negligent driving. Similarly, none on behalf of respondent No.2 got his statement recorded to show that the bus belonging to such respondent and driven by respondent no.1 had not caused the mishap and the bus had been wrongly involved in the accident and a false FIR for causing the accident had been registered against respondent No.1. Therefore, evidence adduced by the claimants has gone un-rebutted.

It may be mentioned here that respondent No.3 also did not lead any evidence despite availing of sufficient opportunities. As such its evidence was closed by order of the Tribunal on 2.12.2014.

Therefore, such argument of learned counsel for the appellant – Insurance company does not cut any ice.

Learned counsel for the appellant - Insurance company had further contended that as admitted by PW-3 Shiksha Devi a case is already filed in Karnal Court under ESI, therefore claim petition was barred under Section 53 of the Employees State Insurance Act.

This argument is vehemently contested by learned counsel for the claimants.

I, on my part, feel that no cogent and convincing evidence in the form of documents is there to show that claimants had filed any petition under the Employees State Insurance Act, in Court at Karnal. Therefore, maintainability of the the claim petition under Section 166 of the Motor Vehicle Act, is not affected in any manner.

Now coming to the quantum of compensation, firstly taking up the claim petition filed by Sunita Devi etc., with regard to death of Bisakhi Ram, the Tribunal has taken his age to be 40 years, keeping in view the fact that his age mentioned to be so in the claim petition, though in the postmortem report, Exhibit P-3, his age was mentioned to be 34 years. The Tribunal was justified in doing so when the claimants themselves state that age of the deceased was 40 years, therefore, his age cannot be taken to be less than that relying upon some document.

According to the claimants, the deceased was earning Rs.15,000/- per month by cultivating the land of his father and in addition to that growing vegetables and selling the same as well as the milk. However, for want of cogent and convincing evidence, the Tribunal has not accepted such contentions of the claimants. He was taken to be as daily labourer and his income was assessed to be Rs.6,000/- per month. In my considered view, the Tribunal was justified in doing so.

However, the Tribunal has not added any amount towards future prospects. In terms of Apex Court authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4)***

***RCR (Civil) 1009,*** addition of 25% is required to be made since the deceased was aged between 40 to 50 years. Doing that total monthly income of Bisakhi Ram comes to Rs. 7,500/- (Rs.6,000 + 1,500/-).

Keeping in view the number of family members, dependent on the deceased, deduction of 1/4th amount is to be made towards personal and living expenses of the deceased. Therefore, in that way the monthly dependency of the claimants comes out to Rs. 5,625/- (Rs.7,500 – 1,875). The annual dependency of the claimants is worked out to Rs. 67,500/- (Rs.5,625 X 12).

Keeping in view the age of the deceased and in terms of the ratio of authority ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** multiplier of 15 has been rightly applied by the Tribunal. By doing that, the payable compensation comes out to Rs.10,12,500/- (Rs. 67,500 X 15).

On this amount, in terms of ratio of authority ***Pranay Sethi's case (Supra),*** the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- on funeral expenses, totalling Rs.70,000/-. Thus the total compensation payable to the claimants comes to Rs.10,82,500/- (Rs. 10,12,500 + 70,000).

In that way, the claimants-cross objectors are entitled to get additional compensation of Rs.1,65,500/- (Rs.10,82,500 – 9,17,000). The claimant-cross objectors shal0l be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. The apportionment and other terms and conditions shall remain the same as given in the original award.

Accordingly, FAO No. 723 of 2015 stands dismissed and cross objections are accepted partly.

Now, taking up the claim petition filed by Jaswinder Kaur etc., with regard to death of Kimti Lal, the Tribunal has taken his age to be 28 years, keeping in view the fact that his age as mentioned to be so in the claim petition. Though in the postmortem report, Exhibit P-4, his age is mentioned to be 25 years. The Tribunal was justified in doing so when the claimants themselves state that age of the deceased was 28 years, therefore, his age cannot be taken to be less than that relying upon some document.

As per the testimony of PW-1 Navdeep Singh, HR Manager, Kandhari Beverages Pvt. Ltd, Saha, the deceased was getting salary of Rs.5,620/- per month. Keeping in view the salary certificate Exhibit P-1 the Tribunal was justified in taking salary of the deceased as 5,620/- per month.

The Tribunal has made an addition of 50% towards future prospects. However, in terms of authority ***Pranay Sethi's case (Supra),*** an addition of 40% is required to be made since the deceased below the age of 40 years. Doing that total monthly income of Kimti Lal comes to Rs. 7,868/- (Rs.5,620 + 2,248/-).

Keeping in view the number of family members, dependent on the deceased, deduction of 1/4th amount is to be made towards personal and living expenses of the deceased. Therefore, in that way the monthly dependency of the claimants comes out to Rs. 5,901/-

(Rs.7,868 – 1,967). The annual dependency of the claimants is worked out to Rs. 70,812/- (Rs.5,901 X 12).

Keeping in view the age of the deceased and in terms of the ratio of authority ***Smt. Sarla Verma's case (Supra),*** multiplier of 17 has been rightly applied by the Tribunal. By doing that, the payable compensation comes out to Rs.12,03,804/- (Rs. 70,812 X 17).

On this amount, in terms of ratio of authority ***Pranay Sethi's case (Supra),*** the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- on funeral expenses, totalling Rs.70,000/-. Thus the total compensation payable to the claimants comes to Rs.12,73,804/- (Rs. 12,03,804 + 70,000).

The Tribunal has awarded a compensation of Rs.14,14,790/- to the claimants. Therefore, FAO 969-2015 is accepted partly and the compensation amount is reduced to Rs.12,73,804/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The excess amount, if paid to the claimants, be refunded to the appellant – Insurance company by them, otherwise, the appellant – Insurance company would be entitled to recover it by moving an execution application before the concerned Tribunal.

**( H.S. Madaan )**
**Judge**

**30.10.2019**
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No