IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 2242 of 2017 (O&M)
Date of decision : 12.9.2019

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Oriental Insurance Company Limited
................Appellant

vs.

Ajmer Kaur and others
.................Respondents

2) FAO No. 4172 of 2017 (O&M)
...

Ajmer Kaur and others
................Appellants

vs.

Dharma Singh and others
.................Respondents

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

Present : Mr. Ashish Yadav, Advocate for the appellant
in FAO 2242-2017 and
for respondent No. 3 in FAO 4172-2017

Mr. A.K. Walia, Advocate for the appellants
in FAO 4172-2017 and
for respondents No. 1 to 5 in FAO 2242-2017

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H. S. Madaan, J.

By this common judgment, I intend to dispose of two appeals i.e. bearing FAO 2242-2017 titled as 'Oriental Insurance Company Limited vs. Ajmer Kaur and others' and FAO 4172-2017 titled as

'Ajmer Kaur and others vs. Dharma Singh and others', as both these appeals have arisen out of the same award.

Briefly stated, facts of the case are that on account of death of Bant Singh, in a motor vehicular accident, which took place on 15.2.2016, at about 6.30/7.00 P.M., on the road leading from Cheema to village Amrui Kotra on main road Bathinda, statedly on account of rash and negligent driving of Mahindra Pick-Up Balero bearing registration No. PB-31P-1566, by respondent No.1 Dharma Singh, legal heirs of Bant Singh son of Kartar Singh, deceased namely, his wife Smt. Ajmer Kaur, daughters Rajwinder Kaur and Gurjit Kaur, sons Darshan Singh and Nirmal Singh, had brought a claim petition under Section 166 of the Motor Vehicle Act, 1988, against respondents i.e. Dharma Singh - driver, Karam Singh - owner and the Oriental Insurance Company Limited, Bathinda - insurer of Mahindra Pick-Up Balero bearing registration No. PB-31P-1566 (hereinafter to be referred as 'the offending vehicle'), claiming compensation of Rs.30 lacs.

In the claim petition they had impleaded Chint Kaur -mother of the deceased as proforma respondent No.4.

On getting notice, all the three respondents appeared and offered a contest. After trial, the Motor Accident Claims Tribunal, Sangrur, vide award dated 13.1.2017, accepted the petition and awarded compensation of Rs.2,51,500/- to the claimants and respondent No.4 to be shared by them equally, whereas claimant No.1 was found entitled to compensation to the tune of Rs.50,000/- on account of loss of consortium. The amount was ordered to be made payable by respondent No.3 with interest @ 7.5% per annum from the date of filing of claim petition till its decision. Further observing that if respondent No.3 failed to make payment within two months from the date of order, then it would be liable to pay future interest @ 9% per annum. The petition was accepted with costs.

Not satisfied with the amount of compensation granted to them by the Tribunal, the claimants have approached this Court by way of filing FAO-4172-2017

Similarly, Insurance company was dissatisfied with the award and has filed a separate appeal bearing FAO-2242-2017

Notice in both the appeals was given to the respective respondents, who have put in appearance through their respective counsel.

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

The Tribunal on appreciation of evidence, adduced before it has returned a finding that the accident took place due to rash and negligent driving of Mahindra Pick-Up Balero bearing registration No. PB-31P-1566, driven by respondent No.1. The reasoning given while deciding issue No.1 is contained in paras No. 10, 11 and 12, which for ready reference are reproduced as under :-

> "10. Since the present petition filed under Section 166 of the Motor Vehicle Act, it was the bounden duty of the claimants to prove that

respondent No.l was driving vehicle No. PB-31P-1566 in a rash and negligent manner at the time of accident. The onus to prove issue No.1 was upon the claimants. To prove said moot point, one of the claimants Darshan Singh himself stepped into witness box as CW1, who in his testimony tendered his affidavit EX.CW1/A, wherein, he testified that on 15.02.2016, at about 6.30/7.00 p.m he was standing at Bus stand Amru Kotra. Meanwhile his father Bant Singh alongwith Shamsher Singh came on Scooty no.PB-44A-9973 from Cheema towards his village. The scooty was driven by Bant Singh. When his father turned the scooty towards his village from the main road, then one Mahindera Pick Up Bollero No.PB- 31P-1556 came from the Sunam Side in a very high sped and the driver of said vehicle in a rash and negligent manner and struck the same with the scooty of his father and dragged the same to a distance of about 15-20 yards. Bant Singh and Shamsher Singh were admitted in Civil Hospital Sunam, from where Bant Singh was referred to Rajindera Hospital Patiala and then to PGI Chandigarh. But Bant Singh succumbed to his injuries on 16.02.2016. The accident was witnessed by him. FIR No.09 dated 16.02.2016, under Sections 279,304-A,337,338,427 of IPC was registered at Police Station Cheema on his statement vide Ex.C1. He categorically testified that the accident was caused due to the rash and negligent driving of the above said vehicle.

11. Having regards to the testimony of CWI Darshan Singh, which is corroborated by the FIR Ex.Cl , it is held that it stands proved that respondent No 1 Dharma Singh was driving the offending vehicle in a rash and negligent manner, due to which, he rammed his car against the Scooty of Bant Singh, 'which resulted into his ill-untimely and unfortunate death.

12. Registration of FIR against respondent No.1 is sufficient to return the findings that he was driving the offending Mahindera Pickup Bolero No PB-31P-1556, in a rash and negligent manner at the time of accident, which resulted into accident and death of Bant Singh. On this point, I am fortified by the ratio of authority ***Girdhari Lal Vs. Radhey Shyam and others***

1993(2) PLR 109, wherein it was observed by the Hon'ble Punjab and Haryana High Court that " when the driver was facing criminal trial, it has to be prima facie concluded that the accident took place due to his rash and negligent driving." Thus, from the evidence available on the record, which is corroborated by registration of the FIR against the respondent No.l, it stands prima facie established that accident took place due to rash and negligent driving of Mahindera Pick up Bolero No.PB-3IP-1566, driven by respondent No.1. Hence, issue No.1 is decided in favour of claimants and against the respondents."

However, while considering the point of quantum of compensation to be awarded to the claimants, the Tribunal has observed in para No. 14 as below :-

"14. The respondents No. l, 2 and 3 being driver, owner and insurer of the offending vehicle are jointly and severally liable to pay the compensation to the claimants. Offending vehicle was insured with respondent No.3, whereby it undertook to indemnify the loss caused to the vehicle or other third person.

Admitted version of the claimants is that deceased Bant Singh was coming on Scooty No. PB-44A-9973 from Cheema to his village Kotra Amru, which was situated on the right side of road. Jeep was going from Sunam to Cheema on the left side of road. Deceased Bant Singh took turn to go towards right side to go to his village Kotra Amru. It was incumbent upon him to take reasonable care and caution to cross the road. But it seems that he did not take proper care to cross the road as jeep in question was going on the left side of road from Sunam to Cheema. Thus contributory negligence of the deceased Bant Singh is assessed as 50%. Thus claimants are entitled to half the amount of compensation out of total amount of Rs. 6,03,000/-. Hence, it is held that respondent No.3 is liable to indemnify the amount of compensation of Rs.3,01,500/- payable by respondents No.l and 2 to claimants. Accordingly issue No.2 is decided in favour of claimants and against the defendants."

In that way, it was taken to be a case of contributory negligence. The negligence of the deceased was found to the extent of 50%. Though learned counsel for the claimants has vehemently argued that keeping in view the facts and circumstances of the case, more particularly, when respondent No.1 – driver of the offending vehicle had been booked in a criminal case for causing the accident and in the written statements filed by the respondents, they had denied involvement of the offending vehicle in the accident not specifically taking plea of contributory negligence and they had not led any evidence in that regard, as such, the Tribunal was not justified in returning the finding that it was a case of contributory negligence.

However, learned counsel appearing for the Insurance company has contended that the facts and circumstances of the case itself showed that the deceased was himself at fault in happening of the accident, rather accident had taken place solely on account of his want of care and caution. Therefore, not only the Tribunal was justified in taking it a case of contributory negligence, rather the claim petition should have been dismissed by the Tribunal for that reason.

After hearing learned counsel for the parties, I find that no fault can be found with the approach of the Tribunal treating it as a case of contributory negligence, when the facts and circumstances of the case clearly show that the deceased was also at fault in happening of the accident, then the Tribunal did not do anything wrong in arriving at such conclusion. But in my considered view, the negligence attributed to the deceased to the extent of 50% is somewhat on higher side and it would be proper and appropriate to take it as 25%. It is ordered accordingly.

Next coming to the quantum part, the Tribunal on assessment of the evidence brought on file by the parties had taken the age of the deceased to be 65 years, considering his such age as entered in the post mortem report Exhibit C-2, treating him as a labourer, his monthly income was assessed to be Rs.6,000/-. Since his age was taken to be 65 years, no addition was made towards future prospects, which was rightly done by the Tribunal. Deducting 1/4th of the amount towards personal and living expenses of the deceased, the dependency of the claimants was found to be Rs.4,500/-. It was so done correctly. The annual dependency was worked out to Rs.54,000/- (Rs.4,500 x 12).

Keeping in view the age of the deceased at the time of accident and in terms of the ratio of authority ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** the Tribunal has rightly applied multiplier of 7. In that way, the total compensation came out to Rs.3,78,000/- (Rs.54,000 x 7).

The Tribunal was no justified in granting Rs. 1 lac to claimant No.1 Smt. Ajmer Kaur, widow of the deceased on account of loss of consortium and Rs. 1 lac to the claimants on account of loss of love and affection,besides Rs.25,000/- on account of funeral expenses.

In terms of ratio of authority ***Pranay Sethi's case (Supra),*** the appellants – 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/- towards conventional Heads.

Thus the total compensation comes out to Rs.3,78,000 + Rs.70,000/- = Rs. 4,48,000/-.

Now deducting 25% of the amount on account of contributory negligence of the deceased, the total compensation amount, to which the claimants are found entitled, comes out to Rs.3,36,000/- (Rs.4,48,000 - Rs.1,12,000).

Counsel for the Insurance company has argued that major sons and married daughters cannot be taken to be dependents upon the deceased.

Learned counsel for the appellants-claimants has referred to judgment ***Smt. Manjuri Bera vs. The Oriental Insurance Company Ltd. and another 2007 (2) RCR (Civil) 674***, by the Apex Court, wherein it was observed that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child. It was further observed that married daughter is entitled to compensation under Section 140 though she was not dependent on deceased father.

He has further referred to authority ***Babu Lal and others vs. D.T.C. And another 2012 (47) RCR (Civil) 335.*** As per facts of that judgment, when a housewife had died in a motor vehicle accident, the claim petition filed by her father-in-law, mother-in-law and two sisters-in-law had been allowed.

The third judgment referred to was ***New India Assurance Co. Ltd. vs. Ashwin Vrajlal Rajgor and others 2005 ACJ 1618***. As per facts of that judgment when a person who was a bachelor, who had died in a roadside accident and had not left behind any heir/legal representative in class I to represent his estate, brother's son , a class II heir, and brother's wife were taken to be legal representatives and found entitled to compensation in the absence of any class I heir.

The next judgment referred by him was ***The New India Assurance Company Ltd. vs. Kuldeep Singh and others, in FAO No. 5452 of 2012 decided on 2.8.2013,*** by a Co-ordinate Bench of this Court, wherein it was observed as under:-

> "Even if a son is major and is earning, he does not stop looking to his father for financial help. It is not a case where the sons were drawing big salary and that they could not look to their father, who was getting petty amount. Sons even if they are major do not lose the status of legal representatives about which there is reference in Section 166 (1)(c) of the Act. Therefore, the major sons can maintain a claim petition for compensation on the death of their father."

Therefore, the claimants and proforma respondent No.4 who were class I heirs of the deceased, are definitely entitled to get the compensation.

The Tribunal has awarded compensation of Rs.3,01,500/-, which is enhanced to Rs.3,36,000/-. The enhanced amount would be apportioned among the claimants and proforma respondent No.4, as follows :-

Ajmer Kaur	- 40%
Rajwinder Kaur	- 10%
Gurjit Kaur	- 10%
Darshan Singh	- 10%
Nirmal Singh	- 10%
Chint Kaur	- 20%

The claimants-appellants and proforma respondent No.4 shall be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. The other terms and conditions shall remain the same as in the original award.

In that way FAO 4172-2017 is allowed partly and the appeal filed by the Insurance Company bearing FAO 2242-2017 stands dismissed.

(H.S. Madaan)
Judge

12.9.2019
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No