IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6277-2017(O&M)
Date of decision:-30.4.2019

Devinder Singh and another

...Appellants

Versus

Jaswinder Kaur and others

...Respondents

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

Present: Mr. Ashwani Arora, Advocate and
Ms. Amandeep Kaur, Advocate,
for the appellants.

Ms. Vandana Malhotra, Advocate,
for respondent No.3-Insurance Co.

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H.S. MADAAN, J.

Petitioners/claimants Devinder Singh, aged about 38 years and Surinder Singh aged about 36 years, both sons of Sh.Sardool Singh and Smt.Karamjit Kaur (deceased), residents of village Chhat, District SAS Nagar (Mohali) had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Jaswinder Kaur – driver, Jaspreet Kaur – owner and ICICI Lombard General Insurance Company Ltd. - insurer of Honda Activa No.PB-65-AH-4605 (hereinafter referred to as the scooter), claiming compensation to the tune of Rs.75 lacs.

As per the case of the claimants, on 19.9.2016 at about 6:50 p.m. their deceased mother was going from Mohali to village Chhat pillion riding Honda Activa No.PB-65-AH-4605 being driven in a rash and negligent manner at a fast speed by Jaswinder Kaur – respondent No.1; that when the scooter in question was on Zirakpur - Banur road, a little ahead of Baba Peer Chowk, then the scooter slipped on the crusher and since the scooter was being driven at a fast speed, respondent No.1 could not control it; that both the riders fell down on the ground along with the scooter and received serious injuries; that injured Karamjit Kaur was removed to Government Hospital, Sector 32, Chandigarh since she was in a bad condition, however, she died there due to injuries suffered by her in the accident; that she was aged about 55 years and was a housewife; that the value of her services to the family was around Rs.12,000/-.

Notice of the claim petition was issued to respondents. Initially respondents No.1 and 2 appeared in Court but subsequently there was no representation on their behalf, as such they were proceeded against ex-parte. Respondent No.3 – Insurance company in the written statement filed by it took various legal objections that the insured had violated the terms and conditions of the insurance policy; that no information regarding the accident was supplied; that the amount claimed as compensation is highly inflated; that the claim petition was filed in collusion with respondents No.1 and 2 just to get illegal compensation; that the driver of the vehicle was not holding a valid driving licence. On merits, material assertions in the claim petition were controverted while coming with a prayer for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:

1. Whether on 19.9.2016, respondent no.1 caused the death of

Karamjit Kaur rashly and negligently driving the offending vehicle bearing no.PB-65-AH-4605? OPP.

2. Whether the petitioners are entitled to compensation, if yes, how much and from whom? OPP.
3. Whether respondent no.1 was not holding an effective and valid driving licence at the time of accident? OPR.
4. Relief.

Both the parties led evidence in support of their respective claims.

In order to prove their case, the petitioner/claimant No.1 got his statement recorded as PW1 besides examining Sh.Harbhajan Singh as PW2.

On the other hand, respondent No.3 tendered in evidence copy of insurance policy as Ex.R1.

After hearing learned counsel for the parties, the claim petition was dismissed by the Tribunal vide Award dated 1.9.2017, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to respondent No.3 – insurance company, which put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the award in question is not sustainable and is liable to be set aside. The Tribunal seems to have been influenced much by the fact that the claimants are real brothers of respondent No.1-Jaswinder Kaur, who was driving the Honda Activa scooter at the relevant time when it got slipped resulting in driver Jaswinder Kaur and pillion rider Smt. Karamjit Kaur falling down and deceased Smt. Karamjit Kaur suffering injuries to which she had succumbed. Another fact which seems to have weighed on the mind of Tribunal was that no FIR was lodged with regard to an accident and Jaswinder Kaur-respondent No.1, who had reported the matter to the police on the basis of which DDR was recorded, had stated therein that the accident had taken place per chance. However, I find that the reasoning given by the Tribunal for dismissal of the claim petition is not very plausible and convincing. Merely for the reason that no FIR was registered with regard to the mishap was no ground to reject the claim petition. Furthermore, Jaswinder Kaur-respondent No.1, who had reported the matter to the police could not be expected to attribute rashness or negligence to her. Before the Tribunal, the claimants had examined the PW-2 Harbhajan Singh, who had provided the eye-witness account of accident in his affidavit PW-2/A categorically stating that Jaswinder Kaur-respondent No.1 was author of the accident by rash and negligent driving of the Honda Activa scooter in question resulting in the accident. He was subjected to searching cross-examination on behalf of the respondents but he stood his ground well. There was no reason for him to come forward to depose falsely in favour of claimants and against the respondents. His presence at the spot is found to be natural and probable and account given by him to be worthy of reliance. Simply for the reason that he had not reported the matter to the police, his presence at the spot cannot be doubted and his deposition treated with suspicion. As a matter of fact, the evidence adduced by the claimants with regard to the accident having taken place due to rash and negligent driving of Honda Activa scooter in question by Jaswinder Kaur-respondent No.1 has gone unrebutted. Therefore, the findings recorded by the Tribunal on issue No.1 cannot survive and this issue is decided in favour of the claimants against respondents holding that the accident in question in which Smt. Karamjit Kaur had suffered injuries to which she has succumbed attribute place on account of rash and negligent driving of Honda Activa scooter in question by Jaswinder Kaur-respondent No.1.

With regard to issue No.2, which has not been decided by the Tribunal at all and has been left as such being redundant, that also deserves to be decided in favour of claimants. From a perusal of copy of Aadhaar card (Ex.P-7), it comes out that date of birth of deceased is mentioned to be 01.09.1962. The accident had taken place on 19.09.2016. In that way she was aged about little more than 54 years at the time of her death. According to the claimants, she was a housewife and she was residing with her sons - the claimants.

Though, it has been argued by learned counsel for Insurance Company that claimants themselves are married middle aged persons having their own families and the deceased was supposed to be dependent upon them for meeting her financial needs and not vice-versa. However, I find that the deceased being a housewife used to contribute to the family by her services by doing household work and value of her services cannot be under-estimated.

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 had taken place in the year 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.

I find it fair and appropriate to take the value of her services to her family/claimants to be Rs.6,000/- per month. Under the circumstances, no amount is to be deducted towards personal expenses and no amount is to be added towards future prospects. The value of her services to the family in that way comes out to Rs.6,000/- per month, annual dependency of the claimants work out to 6,000 x 12 = Rs.72,000/-.

Keeping in view of her age and in view of judgment ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77,*** a multiplier of 11 is required to be applied. Doing that the compensation payable comes out to Rs.7,92,000/-(72,000 x 11). The claimants are entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- more on account of loss of estate. The total compensation payable is worked out to Rs.8,22,000/-(7,92,000 + 30000). Since, it was a package policy, the deceased is to be treated as a third party and Insurance

Company is liable to indemnify respondent No.2 insured with regard to her liability to pay the compensation amount to the claimants. In that way liability of all the three respondents is joint and several. Issue No.2 is decided accordingly.

As regards issue No.3 which was also disposed of being redundant. The onus of proving this issue was upon respondent No.3-Insurance Company. However, it has failed to bring any evidence on record to discharge that, therefore it is decided against respondent No.3-Insurance Company.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.8,22,000/- with interest @ 7.5% p.a. from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimants payable by all the three respondents. The amount of compensation shall be apportioned among both the claimants in equal shares.

30.4.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No