IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-7236-2017(O&M)

Iffco-Tokio General Insurance Company Ltd.

...Appellant

Versus

Smt.Sushil Devi and others

...Respondents

(2) FAO-7237-2017(O&M)

Iffco-Tokio General Insurance Company Ltd.

...Appellant

Versus

Om Parkash and another

...Respondents

(3) FAO-3601-2018(O&M)

Smt.Sushil Devi and others

...Appellants

Versus

Rajpal and another

...Respondents

(4) FAO-4504-2018(O&M)

Om Parkash

...Appellant

Versus

Rajpal and another

...Respondents

Date of Decision:-23.9.2019

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

Present: Mr.Yogesh Gupta, Advocate
for the appellant in FAO-7236-2017 and FAO-7237-2017 and for respondent No.2 in FAO-3601-2018 and FAO-4504-2018.

Mr.Abhimanyu Singh, Advocate
for the appellants in FAO-3601-2018 and FAO-4504-2018 and for respondents No.1 to 4 in FAO-7236-2017 and for respondent No.1 in FAO-7237-2017.

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H.S. MADAAN, J.

**CM-12494-CII-2018 in
FAO-3601-2018 and
CM-15212-C-II-2018 in
FAO-4504-2018**

Heard.

For the reasons mentioned in the applications, delay of 171 days in filing of FAO-3601-2018 and the delay of 172 days in filing FAO-4504-2018 stand condoned. The applications stand disposed of accordingly.

**FAO-7236-2017(O&M);
FAO-7237-2017(O&M);
FAO-3601-2018(O&M); and
FAO-4504-2018(O&M)**

By this order, I shall dispose of four FAOs i.e. FAO-7236-2017, FAO-7237-2017 filed on behalf of insurance company and FAO-3601-2018, FAO-4504-2018 filed on behalf of the claimants, which have arisen out of the same accident.

Briefly stated, the facts of the case as per version of the claimants are that on 17.7.2015 at about 11:00 a.m., Pawanjeet and Bijender had gone to village Kalenga on a motorcycle having registration No.HR-16M/0249; when they had reached near Kalenga turn in village Kharak Kalan, then a truck bearing registration No.HR-61A/4755 (hereinafter referred to as the offending vehicle) came and ran over the motorcycle, resultantly both the riders namely Pawanjeet and Bijender received injuries and died at the spot; formal FIR No.249 dated 18.7.2015 for the offences under Sections 279/304-A IPC regarding the accident was registered at Police Station Sadar, Bhiwani against respondent No.1 Rajpal.

The legal representatives of Pawanjeet, namely, his widow – Smt.Sushil Devi, aged aged about 37 years, minor sons – Parshant and Vikram and mother – Smt.Chameli Devi, aged about 75 years had filed a claim petition bearing MACT Petition No.77 of 2015 under Section 166 of Motor Vehicles Act against respondents i.e. Rajpal – driver-cum-owner and Iffco-Tokio General Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.80 lakhs along with interest.

The legal representative of Bijender, namely Om Parkash had also brought a claim petition bearing MACT Petition No.143 of 2015 under Section 166 of the Motor Vehicles Act against those very respondents claiming compensation to the tune of Rs.50 lakhs along with interest.

Both the claim petitions were tried together since those related to the same accident.

Notice of the claim petitions was given to respondents, who put in appearance and filed separate written statements.

In the written statements filed by respondent No.1, he challenged the locus standi of the claimants to file the claim petitions contending that no cause of action had arisen to the claimants to file the claim petitions; that the claim petitions were not maintainable; that the Tribunal at Bhiwani did not have the jurisdiction to entertain and try the claim petitions; that the claimants had concealed the true and material facts. On merits, he pleaded that no such accident had taken place with the offending vehicle and a wrong story has been concocted by the claimants in collusion with the police; the deceased might have suffered injuries due to hit and run accident or due to some other reasons; that the offending vehicle was insured with respondent No.2 insurance company and he was having a valid and effective driving licence. Refuting the remaining allegations in the claim petitions, such respondent prayed for dismissal of the claim petitions.

In the written statements brought by respondent No.2 insurance company, it has also raked up various objections alleging that the claim petitions had been filed by the claimants in collusion with respondent No.1. Several other legal objections like the claim petitions being bad for mis-joinder and non-joinder of necessary parties; the claimants lacking locus standi etc.; claim petitions being not maintainable in the present form etc. were taken. According to such respondent, respondent No.1 was not holding a legal and valid driving licence at the time of alleged accident and the truck was being plied in contravention of the terms and conditions of the insurance policy. Denying the remaining assertions, such respondent also prayed for dismissal of the claim petitions.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as the Tribunal) allowed the claim petitions partly and compensation of Rs.21,15,000/- with interest @ 9% per annum from the date of the claim petition till realization besides costs of the petition was awarded in claim petition bearing MACT Petition No.77 of 2015 to claimants Smt.Sushil Devi and others and compensation of Rs.10,43,000/- with interest @ 9% per annum from the date of the filing of claim petition till actual realization besides costs of the petition was awarded in claim petition bearing MACT Petition No.143 of 2015 to petitioner Om Parkash. The manner in which the compensation is to be apportioned between the claimants of MACT Petition No.77 of 2015 is also given in the award.

The claimants/petitioners in both the petitions being dissatisfied with the compensation awarded to them and insurance company being dissatisfied with respect to quantum of compensation granted in both the claim petitions have filed separate appeals before this

Court.

Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

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

The first and foremost argument advanced by learned counsel for the insurance company was that involvement of the offending vehicle in the accident was not there and it was rather planted by the claimants in collusion with owner-driver of the said truck and the local police inasmuch in the FIR there is no reference to the vehicle, which had caused the accident and name of its driver is not given and there is no reference to any eye witness of the accident, which was recorded after one day of the alleged accident and it was on asking of author of the FIR, who is brother of the deceased that police recorded statements of witnesses after 43 days of the accident and that witness had stated that he had heard only noise of alleged accident resultantly running towards the spot, therefore, involvement of the truck in question was not proved and the Tribunal has wrongly allowed the claim petitions.

On the other hand, learned counsel for the claimants has vehemently contested these contentions contending that the claimants had brought sufficient evidence on record to show that respondent No.1 had caused the accident by his rash and negligent driving and there is no question of the truck having been planted by the claimants in alleged collusion with respondent No.1 and the police.

After hearing the rival contentions and going through the record, I find that there is no merit in the arguments advanced by learned counsel for the insurance company. FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. It has come on record respondent No.1 – Rajpal was arrested in this case. He was sent up to face trial, though ultimately he is said to have been acquitted but the acquittal of the driver does not have much affect on the present case. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The very fact that respondent No.1 – Rajpal was arrested in this case and then he faced trial, in absence of any evidence to show that he had agitated the matter with the higher police authorities regarding his alleged false implication in this case goes to show that there was no such false implication. With regard to collusion, the respondent No.1 would not have arrested himself, got challaned himself and faced trial for such a long time with imminent chances of conviction without any rhyme or reason. In this case, even if respondent No.1 driver has been acquitted, the prosecution/claimant has got a right to challenge that judgment seeking conviction of the accused and the judgment of acquittal cannot be taken to be final word on the issue. It needs to be mentioned here that while coming to the conclusion that respondent No.1 – Rajpal was author of the accident by his rash and negligent driving of the offending truck, resulting in deaths of Pawanjeet and Bijender, the Tribunal has taken into view the eye-witness account of the accident provided by PW3 Naresh, who had fully supported the case of the claimants. His statement along with testimony of PW6 ASI Ranveer Singh Shekhawat, Investigating Officer, who had stated that he had arrested respondent No.1 as accused regarding the accident finding that Rajpal had caused accident with his rash and negligent driving; further the fact that he had been challaned, charge-sheeted and facing trial in absence of any evidence in rebuttal, finding on issue No.1 was correctly given. Respondent No.1 had not opted to appear in the witness-box to state that the truck driven by him was not involved in the accident or that he had not caused the accident by his rash and negligent driving of the offending truck. Therefore, conclusion drawn by the Tribunal deciding issue No.1 in favour of the claimants is correct and appropriate and it does not call for taking of any different view.

Learned counsel for the insurance company has referred to various judgments i.e. FAO-140 of 2012 titled ***'Reliance General Insurance Co. Ltd.Versus Munshi Singh and others'***, decided on 8.1.2015, FAO-55-2013 titled ***'The Oriental Insurance Co.Ltd. Versus Kamla and others'*** decided on 4.3.2016 and FAO No.483 of 2016 titled ***'Santosh and others Versus Inder Singh and others'***, decided on 28.3.2017 passed by Co-ordinate Benches of this Court in support of his contention that when the FIR has been lodged against an unknown driver and unknown vehicle and driver was arrested after a considerable time, the mere fact that he has been challaned does not lead to the inference that he had in fact caused the accident by his rash and negligent driving of his vehicle. Those judgments do not find application to the present case due to different facts and circumstances and the context in which such observations had been made. He has further contended that respondent No.1 was not having a valid driving licence, therefore, the insurance company was absolved of its liability. However, I find that the Tribunal while deciding issue No.5 has given a positive finding that respondent No.1 was authorized to drive transport vehicle and his licence was valid up to 1.4.2018 and that counsel for respondent No.2 insurance company had not disputed the authenticity of the driving licence during the course of arguments and nothing had been brought on file by the insurance company from which it could be concluded that insured had violated the terms and conditions of the insurance policy. Therefore, such argument is not sustainable.

Now coming to the quantum part. With regard to the compensation awarded in MACT Petition No.77 of 2015 to the legal representatives of deceased Pawanjeet, his age was taken to be 42 years in view of such age entered in his postmortem report Ex.P2. Though as per version of the claimants/deceased was doing job as STP Operator in Aquatech Jhajjar Power LT Jhalari earning a sum of Rs.20,000/- per month but the claimants had not summoned any official from that concern to show such avocation and income of the deceased. The pay slip statedly of deceased was not properly proved and was simply marked as Mark B. It could not possibly be taken into consideration to assess the income of the deceased but the Tribunal even then considered it observing that deceased was a technical worker and assessed his monthly income to be Rs.15,000/-. The Tribunal clearly fell in error in doing so. In absence of clear evidence with regard to avocation and income of the deceased, the Tribunal had taken income of the deceased to be 15,000/-, which is on higher side.

Learned counsel for the insurance company has referred to circular issued Labour Commissioner, Haryana providing minimum wages to the workers w.e.f. 1.7.2015. In terms of this circular for a skilled worker, the wages prescribed are Rs.6,406.67, to make it round figure

Rs.6,407/-.

Therefore, I accept this figure for the purpose of assessing the monthly income of deceased Pawanjeet. The Tribunal has not added any amount to the income of deceased towards future prospects. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was between 40 to 50 years, in such an eventuality 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.6,407 + 1601 = Rs.8,008/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members are 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.6,006/- per month, annual dependency comes out to Rs.6,006 x 12 = Rs.72,072/-.

The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.72,072 x 14 = 10,09,008/-.

The Tribunal has further granted a sum of Rs.1 lakh for consortium for widow, Rs.1 lakh for loss of love and affection and a sum of Rs.25,000/- for the expenses incurred on the last rites. However, 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. 10,09,008 + 70,000 = 10,79,008/-.

The Tribunal has wrongly awarded compensation of Rs.21,15,000/-. The same is reduced to Rs.10,79,008/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.10,79,008/-. Other terms and conditions regarding apportionment in the original award shall remain the same.

Now coming to the compensation awarded to the claimant Om Parkash in MACT Petition No.143 of 2015. The Tribunal took the age of deceased Bijender to be 30 years keeping in view the age entered in the postmortem report and his monthly income was assessed to be Rs.9,000/- as skilled worker rejecting the case of the claimant that he was earning Rs.15,000/- per month by working in a sweet shop.

In view of the abovesaid circular, I assess the income of the deceased Bijender to be Rs.6,407/- per month.

The Tribunal has not added any amount to the income of deceased towards future prospects. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was below the age of 40 years, 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.6,407 + 2,562 = Rs.8,969/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the deceased is unmarried, deduction towards self-expenses is to be taken as 1/2. Doing that the dependency of claimant comes out to Rs.4,484/- per month, annual dependency comes out to Rs.4,484 x 12 = Rs.53,808/-/-.

The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.53,808 x 17 = 9,14,736/-.

The Tribunal has further granted a sum of Rs.1 lakh for loss of love and affection and also for loss of care and guidance to minor children and a sum of Rs.25,000/- for the expenses incurred on the last rites. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimant is entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 9,14,736 + 30,000 = 9,44,736/-.

The Tribunal has wrongly awarded compensation of Rs.10,43,000/-. The same is reduced to Rs.9,44,736/-. The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.9,44,736/-. Other terms and conditions regarding apportionment in the original award shall remain the same.

With such modifications, FAO-7236-2017 and FAO-7237-2017 filed on behalf of Insurance Company are allowed partly with costs.

If the amount of compensation has already been paid by the Insurance company, it shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Motor Accidents Claims Tribunal, Bhiwani

There is absolutely no reason to enhance the amount of compensation rather it has been reduced in both the cases.

Consequently, FAO-3601-2018 and FAO-4504-2018 filed on behalf of the appellants/claimants stand dismissed with costs.

23.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No