In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 16.10.2019

FAO No. 6276 of 2019 (O&M)

Royal Sundram General Insurance Company Limited

---Appellant

versus

Babita and others

---Respondents

FAO No. 6277 of 2019 (O&M)

Royal Sundram General Insurance Company Limited

---Appellant

versus

Ranjit Kaur and others

---Respondents

FAO No. 6278 of 2019 (O&M)

Royal Sundram General Insurance Company Limited

---Appellant

versus

Karamjit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Amit Goyal, Advocate
for the appellant-insurance company

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Rekha Mittal, J.

This order will dispose of FAO Nos. 6276 to 6278 of 2019 as these have emerged out of the same accident wherein Sushil Kumar son of Sanjeev Kumar, Jaspinder Singh son of Darshan Singh and Harbans Singh son of Malkiat Singh sustained injuries that proved fatal.

FAO No. 6276 of 2019 has been filed to assail grant of compensation qua death of Sushil Kumar, FAO No. 6277 of 2019 in respect of death of Jaspinder Singh and FAO No. 6278 of 2019 with regard to death of Harbans Singh. For facility of reference, facts are taken from FAO No. 6276 of 2019.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Motor Accidents Claims Tribunal, Sangrur (in short "the Tribunal") on issue No. 1 and quantum of compensation. Counsel would argue that the Tribunal has not recorded findings that accident is the result of rash or negligent driving or both of offending vehicle i.e. trolla bearing No. HR-38W-9678 by Parveen Malik-respondent No. 3 It is argued with vehemence that as the tractor and compressor machine were parked on the road without indicators/reflectors, the present is a case of contributory negligence and claimants are not entitle to compensation to the extent of negligence attributable to driver of the tractor with which compressor machine was attached.

With regard to quantum of compensation, it is submitted that since claim in all the three cases have been filed by parents of deceased being unmarried boy(s), admissible deduction for personal and living expenses should be 50% in place of 1/3rd. Addition in income for future prospects and compensation under conventional heads may be modified in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**.

The plea of claimants is that on 31.8.2018, Sushil Kumar along with Fakir Singh, Sukhwinder Singh, Makhan Singh, Jaspinder Singh, Harbans Singh and Dilpreet Singh were on their way to their village from Jind after doing work. At about 10.30 p.m. when they reached near over bridge, Mehlan, tyre of compressor machine got punctured. Due to heavy weight of compressor machine it could not be moved. They left the tractor and compressor machine there and tried to repair the same and placed bricks around the machine and tractor as a signal. At about 4.00 a.m. when they tried to repair the tractor and compressor machine, trolla bearing No. HR-38W-9678 came from Sular Gharat side in a rash and negligent manner and struck into the compressor machine and tractor and due to impact, Sushil Kumar, Harbans Singh, Jaspinder Singh, Fakir Singh, Sukhwinder Singh, Dilpreet Singh and Makhan Singh received grievous injuries. Harbans Singh, Jaspinder and Sushil Kumar died at the spot and other injured were taken to Civil Hospital, Sangrur. Tractor and compressor machine were also badly damaged. On the statement of Fakir Singh @ Fakiria, FIR No. 134 dated 1.9.2018 under Sections 304-A, 279, 337 and 338 of the Indian Penal Code was registered at Police Station Chhajli against the driver of offending vehicle (respondent No. 1 therein).

Fakir Singh @ Fakiria appeared in the witness box and tendered into evidence his duly sworn affidavit wherein he narrated as to how the occurrence in question took place due to rash and negligent driving of offending vehicle. The witness was cross examined at length by counsel for the insurance company. In cross examination, he had stated that tyre of compressor machine got punctured immediately on climbing the bridge and bridge was 40 feet in width and lights were on. He had further stated that they shifted the compressor on a side but the same could not be removed from bridge as it was heavy. The driver of offending vehicle did not appear in the witness box to explain the circumstances under which the occurrence in question took place. That being so, an adverse inference is liable to be drawn against the respondent before the Tribunal for non-examination of driver of offending vehicle. On the basis of FIR registered at the behest of Fakir Singh, investigation was still in progress. Counsel, in response to a query, has expressed his ignorance about status of criminal proceedings.

Taking into consideration testimony of Fakir Singh coupled with that driver of offending vehicle did not appear in the witness box, I do not find any reason to send the case back to the Tribunal for recording specific finding with regard to rash and negligent driving of offending vehicle more particularly that the appellant has failed to raise any convincing arguments that the present is a case where contributory negligence can be attributed to driver of the tractor. The tractor was attached with a compressor machine and lights on the bridge were on. There was no reason for driver of offending vehicle not to notice the parked vehicle and hitting the compressor machine and tractor indicates nothing short of that he miserably failed to take reasonable care and caused the accident resulting in death of three young boys. In this view of the matter, contention raised by the appellant that the present is a case of contributory negligence of the driver of tractor much less the deceased is not meritorious and rejected. As such, appellant cannot derive any advantage to its contention from judgment of Hon'ble the Supreme Court **Archit Saini and another vs. Oriental Insurance Company Limited and others 2018(5) RCR (Civil) 80,** judgments of this court **Sheela Devi vs. Jeet Singh and**

others 2014 (56) RCR (Civil) 24, Oriental Insurance Company Limited vs. Smt. Nagina and others 2017 (1) RCR (Civil) 1001 and that of the Gujarat High Court **Oriental Insurance Company Limited vs. Chirag Nayankumar Shah and others 2015 (50) RCR (Civil) 184,** decided in view of peculiar facts and circumstances of those cases.

The Tribunal has allowed deduction for personal and living expenses of the deceased to the extent of 1/3rd. The claim was preferred by unfortunate parents of Sushil Kumar, Jaspinder Singh and Harbans Singh. The Tribunal, despite noticing judgment of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298** for the purpose of applying multiplier of 18 ignored the said judgment while deciding the question of deduction for personal expenses of the deceased. In the light of judgment in **Smt.Sarla Verma and others' case (supra)** and decision by a Constitution Bench of Hon'ble the Apex Court in **Pranay Sethi and others' case (supra)**, admissible deduction for personal and living expenses would be 50%. Similarly, addition in income for future prospects would be 40% and compensation under conventional heads is restricted to Rs. 30,000/- detailed hereunder:-

Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 15,42,000/- (10000x12x18 + 40% - 50% thereof + 30000) and compensation assessed by the Tribunal is reduced to the extent of Rs.6,68,000/-.

In view of aforesaid observations, compensation in FAO Nos.

6277 and 6278 of 2019 is Rs. 12,39,600/- (8000 x 12 x18 + 40% - 50% thereof + 30000) and compensation assessed by the Tribunal is reduced to the extent of Rs. 5,38,400/- in each appeal.

The appeals are partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that compensation has been reduced without notice to the respondents. The respondents would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to the -respondents-claimants, if they prefer appeal(s) for enhancement.

(Rekha Mittal)
Judge

16.10.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No