In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 27.3.2019

FAO No. 4710 of 2014(O&M)

Cholamandalam MS General Insurance Company Limited

---Appellant

versus

Renu and others

---Respondents

FAO No. 5031 of 2014(O&M)

Renu and others

---Appellants

versus

Sant Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Vandana Malhotra, Advocate
for the appellant in FAO- 4710 of 2014

Mr. Sanjeev Pabbi, Advocate,
for the Oriental insurance company

Mr. Vikram Jeet Singh, Advocate
for the appellants in FAO-5031 of 2014
for respondents No. 1 to 6 in FAO-4710 of 2014

Mr. Sudershan Thakur, Advocate
for Mr. Pawan Singh, Advocate
for respondent No. 5 in FAO-5031 of 2014

Mr. Anil Ghangas, Advocate
for respondent No. 8 in FAO-4710 of 2014
for respondent No. 2 in FAO- 5031 of 2014

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Rekha Mittal, J.

This order will dispose of FAO Nos. 4710 and 5031 of 2014 as these have emerged out of the same award dated 4.2.2014 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short “the Tribunal”) whereby compensation has been assessed on account of death of Rajesh Kumar in a motor vehicular accident that took place on 12.6.2012.

FAO No. 4710 of 2014 has been filed by Cholomandalam MS General Insurance Company Limited (hereinafter referred to as “the insurance company”) whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

FAO No. 4710 of 2014

Counsel for the insurance company would inform that the appeal has been preferred primarily on three grounds namely (i) that the insurance company is not liable to pay compensation as the deceased was a gratuitous passenger (ii) negligence to the extent of 80% has been wrongly attributed to driver of the offending vehicle Canter No. HR-55K-6578 insured with the appellant insurance company and (iii) quantum of compensation assessed by the Tribunal.

To bring home her contention with regard to the deceased being a gratuitous passenger, it is argued that in the FIR registered at the behest of Dalip Singh PW2, there is no reference that any goods were loaded in the canter from Delhi or carried in the canter at the time of occurrence. It is further argued that Dalip Singh PW2 in his cross examination has stated that they were going to Karnal for loading household articles and before reaching Karnal from where household articles were to be loaded, the canter in question met with an accident and as such, they could not load the articles in the canter.

Another submission made by counsel is that in view of manner of accident narrated by Dalip Singh, contributory negligence to the extent of 80% attributed to driver of the canter is on higher side and needs to be reduced. She has challenged quantum qua income assessed and compensation allowed under conventional heads.

Counsel representing the respondents have supported findings of the Tribunal attributing 80% negligence to driver of the canter and accordingly liability of the insurance company to pay 80% of compensation assessed by the Tribunal.

The contention of the insurance company with regard to quantum of compensation would be considered while deciding FAO No. 5031 of 2014, filed by the claimants seeking enhancement of compensation.

The insurance company has sought to escape liability to pay compensation on the premise that Rajesh Kumar was a gratuitous passenger in the vehicle meant for transporting goods. Dalip Singh lodged the FIR but the FIR does not make reference that any goods were loaded from Delhi or the canter was carrying goods/household articles at the time of unfortunate occurrence on 12.6.2012.

Dalip Singh tendered into evidence his affidavit Ex. PW2/A by way of examination in chief. A relevant extract from his testimony, reads thus:-

> "The deceased hired Canter No. HR-55K-6578 from Network Tempo Transport Carrier Punjabi Bagh, Transport Centre CSC Market Shop No. 20, Delhi supplier of Canter on 12.6.2012 at about 1-00 p.m. for unloading the goods at Karnal. After loading the goods from Delhi, canter No. HR-55K-6578 being

driven by its driver Sant Ram was proceeding towards Karnal. The deceased and the deponent were sitting in the cabin whereas employed labour namely Sanjay, Rajwe and Vinod were sitting behind the Canter."

In his cross examination, he had stated about loading of household articles at Karnal. There is no challenge to his testimony that after loading the articles at Delhi, they were going to Karnal for unloading those articles. It can be inferred from the testimony of Dalip Singh that certain articles were loaded at Delhi and the same were to be unloaded at Karnal but at the same time certain articles were to be loaded from Karnal as well but the same could not be loaded as the vehicle met with an accident before reaching Karnal. In the given circumstances, it is difficult to accept contention of the insurance company that since no goods were being carried in the canter in question at the time of occurrence, Rajesh Kumar is to be taken as gratuitous passenger, therefore, the insurance company is not liable to pay compensation for death of Rajesh Kumar.

The plea of the insurance company with regard to extent of contributory negligence of driver of canter being on higher side is not meritorious when examined in the light of materials on record more so that the criminal proceedings were initiated against driver of the canter. The driver of canter did not appear in the witness box to explain as to how the occurrence in question took place much less to prove that he was not negligent in his driving or cannot be blamed to any extent whatever for the occurrence in question. In this view of the matter, both the aforesaid contentions raised by the insurance company are not meritorious and accordingly rejected.

In view of what has been discussed hereinbefore, the appeal stands disposed of.

FAO-5031 of 2014

The Tribunal awarded Rs., 21,50,000/- detailed hereunder:-

Monthly income of the deceased	Rs. 15,000/-
Deduction for personal and leaving expenses	1/4th
Multiplier	15
Loss of dependency	Rs. 20,25,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of care and guidance for minor children and funeral expenses	Rs. 25,000/-

Counsel for the claimants has submitted that the Tribunal has not allowed addition in income for future prospects and the same may be allowed @ 40% as the deceased was less than 40 years of age.

Counsel for the insurance company has challenged assessment of income of the deceased and has referred to testimony of Ravinder Kumar Singhal PW3. It is argued that except the certificate issued by said Ravinder Kumar Singhal mentioning income of the deceased at Rs. 15,000/- approximately, there is no other documentary evidence produced by PW3 to prove avocation and income of the deceased. It is further argued that minimum wage of a skilled person at the relevant time fixed by the State of Haryana was Rs. 5000/-.

Counsel representing the claimants, in reply, has supported findings of the Tribunal with regard to assessment of income.

Ravinder Kumar Singhal PW3 was examined to prove salary certificate Ex. PW3/A. In the opening line of his cross examination he has stated that he has not brought any record to prove him to be proprietor of M/s South Packers and Movers, which is not a registered firm. The witness did not produce any records/accounts to prove income of the deceased. In the given circumstances, I find merit in contention of the insurance company that salary certificate Ex. PW3/A cannot form the basis for assessing income of the deceased. Taking a clue from notification issued by the State of Haryana coupled with the materials on record that the deceased was working as a contractor and had hired the canter for loading and unloading of goods for M/s South Packers and Movers, income of the deceased is assessed at Rs. 7000/- per month. Claimants are entitle to increase in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 13,23,000/- [7000 x 12 x15 = 12,60,000 + 5,04,000 (40%) = 17,64,000 – 4,41,000(1/4th)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034,** detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 13,93,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs. 7,57,000/- (21,50,000-13,93,000). The insurance company shall be at liberty to file an appropriate application before the Tribunal for recovery of excess amount, if paid. All other terms and conditions of the award shall remain intact.

The appeal is disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

27.3.2019
PARAMJIT

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes/No