IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 1947 of 2017 (O&M)
Date of decision : 23.5.2019

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Asin @ Mohd. Yaseen
................Appellant

vs.

Shri Ram General Insurance Company Ltd., Jaipur
and others
.................Respondents

2) FAO No. 1583 of 2014 (O&M)

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Smt. Samina and others
................Appellants

vs.

Asin and another
.................Respondents

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

Present: Mr.Sarfraj Hussain, Advocate for the appellant in FAO 1947-2017.

Mr. Ashish Gupta, Advocate for the appellants in FAO 1583-2014

Mr. Arjun Attri, Advocate for respondent No.1 in FAO 1583-2014

Mr. Rajbir Singh, Advocate for respondent No.2 in FAO 1583-2014

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H. S. Madaan, J.

By this common judgment, I intend to dispose of two appeals i.e. bearing FAO No. 1947 of 2017 titled as 'Asin @ Mohd. Yaseen vs. Shri Ram General Insurance Company Ltd., Jaipur and others' and FAO No. 1583 of 2014 titled as having title Smt. Samina and others vs. Asin and another', as both these appeals have arisen out of the same award.

FAO 1583-2014

Smt. Samina, aged about 36 years, widow, Abida, aged about 16 years, Huneeja,aged about 15 years, Wajeeda aged about 13 years minor daughters, Master Saleem aged about 11 years, Mohammad Sad aged about 8 years, minor sons of Ayyub, an unfortunate victim of a roadside accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Respondent No.1 Asin – driver-cum-owner of the vehicle bearing No. HR 55E-3707 (hereinafter to be referred to as 'the offending vehicle') and Shri Ram General Insurance Company Limited, Jaipur, having branch office at Gurgaon, insurer of that offending vehicle, claiming compensation to the tune of Rs.45 lacs.

As per case of the claimants Ayyub son of Darey Khan, aged about 38 years, on 17.1.2012, at about 11.00 A.M. was driving his motorcycle bearing registration No. HR-28B-0385, with his companion Sahid son of Mouj Khan, pillion riding had reached near Chor Chabutra, Nuh Ghati, then the offending vehicle being driven by respondent No.1 Asin in a rash and negligent manner came from the opposite side and hit the motorcycle being driven by the deceased. As a result both the riders of the motorcycle fell down and sustained multiple injuries. They were shifted to AIIMS Trauma Centre , New Delhi. However, Ayyub succumbed to the injuries on 21.1.2012. The matter was reported to the police, on the basis of which FIR No. 27 dated 18.1.2012 for offences under Sections 279, 337 and 304A IPC was registered at the instance of Manzoor Ahmed. As per version of the claimants, deceased was aged about 38 years and was driver by profession. He used to earn Rs.20,000/- per month; that deceased was hale and hearty before the accident. On account of his death the claimants have suffered considerably. Therefore, the claim petition be accepted.

On notice, the respondents appeared. Respondent No.1 filed written statement taking various preliminary objections with regard to maintainability of the petition, locus standi of claimants to do so. According to such respondent, claimants have concealed true and material facts. On merits such respondent denied involvement of the offending vehicle in the accident. According to him, he is having a valid and effective driving licence and the vehicle was insured with respondent No.2 and in case the Tribunal comes to the conclusion that the accident was caused due to rash and negligent driving by respondent No.1, then respondent No.2 shall indemnify the insured.

In the written statement filed on behalf of respondent No.2, it has also taken up various legal objections. On merits, controverting the assertions made in the claim petition, denying its liability to pay any compensation to the claimants, contended that respondent No.1 was not having a valid and effective driving licence at the time of the accident. In the end such respondent prayed for dismissal of the claim petition.

From the pleadings of the parties, following issues were framed:-

1. Whether the accident in question resulting in death of Ayyub Khan son of Darey Khan took place on 17.1.2012 at about 11 am near Chor Chabutra, Nuh Ghati because of rash and negligent driving of vehicle bearing registration No. HR 55E-3707 by its driver, respondent No.1? OPP
2. If issue No.1 is proved whether petitioners are entitled to get compensation, if so, to what amount and from whom? OPP
3. Whether respondent No.1 was not holding valid and effective driving licence at the time of alleged accident. If so, its effect? OPR-2
4. Whether respondent No.1 has violated the terms and conditions of the insurance policy as alleged? OPR-2
5. Relief.

Parties led evidence in support of their respective claims. Claimant-petitioners in order to prove their case, examined Smt. Samina, petitioner No.1 as PW-1, Ahmad as PW-2 and Amit Kumar as PW-3. They relied on copies of Driving licence of Asin as Exhibit P-1, RC as Exhibit P-2, Insurance policy as Exhibit P-3, admission in hospital Mark-1, DD No. 67-B dated 20.1.2013 as Mark-B, death certificate of Ayyub as Mark-C, driving licence of Ayyub as Mark-D, PMR as Mark E and FIR as Mark F.

On the other hand, respondents tendered copies of driving licence of Asin as Exhibit R-1, Driving licence of Asin as Exhibit R-2 and insurance policy as Exhibit R-3.

After hearing the arguments, the Tribunal, decided issue No.1 in favour of the petitioners and against the respondents. Issue No. 2 was decided in favour of the claimants, whereas issues No. 3 and 4 were decided against respondent No.1 and in favour of respondent No.2.

As a result of findings on the issues, the Tribunal vide its award dated 30.10.2013, awarded a sum of Rs.7,55,000/- as compensation to the claimants with interest @ 9% per annum from the date of petition till actual realization, with the observation that at first instance the award shall be satisfied by respondent No.2 Insurance company and it would be entitled to recover the amount from the owner. This direction was so issued for the reason that the vehicle was being plied without any route permit. The manner in which the compensation amount was to be apportioned to the claimants, was also given in the award.

Feeling dissatisfied with the award passed by the Tribunal, Asin @ Mohd. Yaseen – respondent No.1- driver-cum-owner of the offending vehicle, has filed FAO – 1947-2017 whereas Smt. Samina and others - claimants have preferred FAO-1583-2014, for enhancement of compensation.

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

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

As far as appeal filed by the claimants for enhancement of compensation, is concerned, the Tribunal has taken age of the deceased to be 38 years, his avocation as driver and his monthly income to be Rs.5,000/-. The accident had taken place on 17.1.2012.

At that time the minimum wages payable to a skilled labourer in the State of Haryana were Rs.5,237/-. The Tribunal has not granted any addition towards the future prospects. In terms of authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** addition of 40% is required to be made since the deceased was aged below 40 years. Doing that his total monthly income comes to Rs. 7,332/- (Rs.5,237 + 2,094.80 (rounded off to Rs.2,095/-)).

Keeping in view the number of dependents on the deceased to be 6, deduction of 1/4th amount is to be made towards personal expenses of the deceased. Therefore, in that way the monthly dependency of the claimants comes out to Rs. 5,499/- (Rs.7,332 – 1,833). The annual dependency of the claimants is worked out to Rs. 65,988 (Rs.5,499 X 12).

Keeping in view the age of the deceased and in terms of the ratio of authority ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** multiplier of 15 is to be applied. By doing that, the payable compensation comes out to Rs.9,89,820/- (Rs. 65,988 X 15).

On this amount, 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/-. Thus the total compensation payable to the claimants comes to Rs.10,59,820/- (Rs. 9,89,820 + 70,000).

In that way, the claimants are entitled to get additional compensation of Rs.3,04,820/- (Rs.10,59,820 – 7,55,000). The claimant-appellants 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 apportionment and other terms and conditions shall remain the same as in the original award. In that way this appeal is allowed partly with costs.

FAO 1947-2017

Now coming to the appeal filed by the insured, who has been saddled with the liability for the reason that the offending vehicle was not having any route permit.

As per report from the office of Regional Transport Authority, Nuh, Mewat, the offending vehicle was having route permit w.e.f. 22.2.2011 to 21.2.2012. This fact could not be controverted by learned counsel appearing for the Insurance company. Therefore verdict given by the Tribunal that there was violation of terms and conditions of Insurance policy on account of the vehicle in question being run without route permit, thus granting recovery rights to the respondent-Insurance company, cannot stand. The direction in that regard is set aside.

Resultantly, the liability of respondent No.2 – Insurance company shall be joint and several alongwith respondent No.1 Asin @ Mohd. Yaseen. Rather Insurance company would pay the entire compensation amount alongwith interest and costs, as awarded by the Tribunal, as well as, the enhanced compensation alongwith interest and costs awarded by this Court. In that way, the appeal bearing FAO 1947-2017, filed by Asin @ Mohd. Yaseen - insured is accepted.

(H.S. Madaan)
23.5.2019 **Judge**
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No