IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 13.02.2020

XOBJC-72-CII of 2016 (O&M) in/and
FAO No.7474 of 2015 (O&M)

Reliance General Insurance Co. Ltd. ... Appellant

Versus

Deepak and ors. ... Respondents

FAO No.692 of 2016 (O&M)

Suresh and anr. ... Appellants

Versus

Reliance General Insurance Co. Ltd. and anr. ... Respondents

FAO No.2919 of 2017 (O&M)

Suresh Kumar and anr. ... Appellants

Versus

Santosh and ors. ... Respondents

FAO No.3571 of 2017 (O&M)

Santosh and ors. ... Appellants

Versus

Suresh Kumar and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Kodan, Advocate
for Reliance General Insurance Co. Ltd.

Mr. Surinder Gandhi, Advocate
for claimant-Deepak/cross objector.

Mr. Sudhir Hooda, Advocate
for driver and owner.

Mr. Ram K. Saini, Advocate
for claimants-Santosh and ors.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.7474 of 2015, cross objections No.72-CII of 2016 in said FAO, FAO No.692 of 2016, Nos.2919 and 3571 of 2017 as these have emerged out of the same accident in which Subhash succumbed to the injuries and Deepak sustained injuries.

FAO No.7474 of 2015 has been filed by Reliance General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company'), FAO Nos.692 of 2016 and 2919 of 2017 have been filed by owner and driver of offending vehicle whereas FAO No.3571 of 2017 has been filed by the claimants seeking additional compensation in regard to death of Subhash.

FAO Nos.2919 and 3571 of 2017

The Tribunal awarded Rs.8,10,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Multiplier	14
Deduction for personal expenses	1/4th
Loss of dependency	Rs.7,56,000/-
Expenses on funeral	Rs.25,000/-
Transportation and miscellaneous expenses	Rs.4000/-
Loss of love and affection	Rs.25,000/-

The plea of claimants is that deceased was working as cleaner/khlasi on truck bearing No.HR-46-C-2752 (offending vehicle) at salary of Rs.9000/- per month. However, claimants failed to adduce sufficient much less cogent evidence with regard to income of the deceased. Income assessed is affirmed. Claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier and deduction for personal expenses applied by the Tribunal are correct. In this manner, loss of dependency is calculated at Rs.9,45,000/- [(6000 x 12 x 14) + (25% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.10,15,000/- and additional amount is Rs.2,05,000/- (10,15,000 - 8,10,000) payable with interest @ 7.5% per annum from the date of petition till realization, in terms of award.

Counsel for the appellants (driver and owner) in FAO No.2919 of 2017 would argue that insurance company has wrongly been exonerated of liability to pay compensation with regard to death of Subhash. It is argued that as Subhash was employed as cleaner/khlasi on the aforesaid truck, plea of the insurance company with regard to deceased being a gratuitous passenger has wrongly been allowed on the basis whereof insurance company is exonerated of liability to pay compensation.

Counsel for the insurance company, in reply, would argue that the Tribunal on detailed consideration of the matter has held in para 23 of the award that Subhash (wrongly mentioned as Suresh) was gratuitous passenger in the truck. It is further argued, in the alternative, that as per policy obtained by Rajbir Singh Hooda, registered owner/insured of the offending vehicle, no premium was paid for PA benefit to cleaner and as such, the insurance company cannot be saddled with liability to pay compensation even if it is accepted that deceased was a cleaner on the offending truck.

The Tribunal has exonerated insurance company of liability to pay compensation. In para 25 of the award, there is reference that no premium regarding cleaner was charged by the insurer. Without going into the controversy as to whether the deceased was or was not a cleaner on the vehicle in question, perusal of copy of the policy supplied during course of hearing correctness whereof has been accepted by counsel for the appellants in FAO No.2919 of 2017 makes it evident that no premium was paid in respect of paid driver or PA benefit to cleaner. That being so, the insurance company is rightly exonerated of liability to pay compensation.

In view of what has been discussed hereinbefore, the appeals stand disposed of in the aforesaid terms. Additional compensation assessed by this Court shall be paid by the driver and owner of offending vehicle, jointly and severally.

XOBJC-72-CII of 2016 in/and FAO No.7474 of 2015
FAO No.692 of 2016

Counsel for the appellant-insurance company would argue that as Deepak was cleaner on truck No.HR-46-C-2752 and as per the policy, no premium was paid in respect of personal accident of cleaner, the insurance company has wrongly been fastened with liability to pay compensation to the extent of Rs.2 lakh. It is further argued that award passed by the Tribunal may be modified and entire liability to pay compensation may be imposed upon driver and owner of offending vehicle.

Counsel for the registered owner of the vehicle has supported findings of the Tribunal whereby insurance company has been directed to pay compensation to the extent of Rs.2 lakh out of Rs.3 lakh, assessed in respect of injuries sustained by Deepak.

Counsel for cross objector/claimant would argue that compensation allowed by the Tribunal merits enhancement. To bring home his contention, it is argued that the injured remained hospitalised for a period of about 6 months as he sustained serious injuries in the shape of fractures, noticed in para 17 of the award.

Counsel representing the driver and owner of vehicle has refuted contention of the claimant/cross objector seeking additional compensation with the submission that there is no justification for the same.

The question with regard to liability of the insurance company to pay compensation qua injuries sustained by cleaner of offending truck stands answered while disposing of FAO No.2919 of 2017. As such, insurance company shall not be liable to pay compensation in respect of injuries sustained by Deepak.

The Tribunal awarded Rs.3 lakh, detailed hereunder:-

Medical and other expenses	Rs.2,00,000/-
Loss of earning	Rs.50,000/-
Pain and sufferings	Rs.50,000/-

The claimant appeared in the witness box and tendered into evidence his affidavit Ex.PW1/A. The Tribunal has noticed material part of testimony of claimant, in paras 16 and 17 of the award. The injured was initially taken to Indira Gandhi Medical College, Shimla and remained admitted there for two days. He was brought to PGIMS, Rohtak and remained indoor patient from 15.08.2012 to 28.09.2012 and thereafter in GB Pant Hospital, Delhi from 15.02.2013 to 18.02.2013. The injured sustained closed fracture proximal humerus left side, body scapula right side, distal end of radius left side, shaft of femur right side and ribs left side. Taking into consideration the period of hospitalisation and nature of injuries sustained, claimant is awarded Rs.25,000/- for transportation, services of an attendant and special diet etc. The additional amount shall be payable with interest @ 7.5% per annum from the date of petition till realization, to be paid by the driver and owner of offending vehicle.

Disposed of accordingly.

(REKHA MITTAL)
JUDGE

13.02.2020
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No