IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on:10.10.2022

DATE OF DECISION: October 20, 2022

1. **FAO-7095-2011 (O&M)**

Oriental Insurance Company Limited .... Appellant

Versus

Vidya Devi and others .... Respondents

2. **FAO-213-2012(O&M)**

Vidya Devi and others …..Appellants

Versus

Satpal and others …..Respondents

3. **FAO-2520-2012(O&M)**

New India Assurance Company …..Appellant

Versus

Vidya Devi and others …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.A.K. Walia, Advocate for the claimants.

Mr. Jitender Nara, Advocate for respondents No.1 & 2 in FAO-213-2012.

Mr. D.P. Gupta, Advocate for respondent No.3 in FAO-213-2012.

Mr. Neeraj Khanna, Advocate for respondent No.6/New India Assurance Company.

Mr.R.C. Gupta, Advocate for respondent No.8/New India Assurance Company in FAO-7095-2011.

****

<u>HARKESH MANUJA, J.</u>

This order of mine shall dispose of the following three appeals arising out of the common award dated 05.09.2011 passed by learned Motor Accident Claims Tribunal, Bathinda, (for short 'the Tribunal'):-

i) FAO No.7095-2011 filed by Insurance Company of vehicle Tavera bearing registration No. PB-13-D-1515 against fastening of liability as well as for reduction of compensation;

ii) FAO-213-2012-filed by claimants for enhancement of the compensation on account of death of Jagdish Lal and his wife Nirmal Sharma;

iii) FAO-2520-2012 filed by Insurance Company of Truck bearing registration No. HR-19-E-6751, against fastening of liability as well as for reduction of compensation.

A perusal of all these appeals shows that common questions of law and facts are involved which can be divided in two categories. The first question to be decided is regarding the liability i.e. the Insurance Company of which vehicle i.e. Tavera or Truck, shall be held responsible for the payment of the compensation amount or liability should be thrashed upon owner of Tavera. The second question is regarding the quantum of compensation awarded to the claimants. Hence, there will be two prong discussions.

A- <u>FASTENING OF LIABILITY</u>:

This question has bearing on all the three cases and therefore, qua this aspect all these appeals are being decided together.

Brief facts of the case are that on 22.05.2009, both Jagdish Lal and his wife Nirmal Sharma along with their relatives were going from Mandi Dabwali to Pundri to attend a Bhog ceremony in a vehicle make Tavera bearing registration No.PB-30-D-1515. At about 7.00/7.15 am when they reached near Anand Brick Kiln, Village Daryapur, driver of Tavera suddenly turned the car towards right side sharply and struck against Truck bearing registration No. HR-19-E-6751, coming from opposite side. Driver of the Tavera saved himself; but Jagdish Lal and Nirmal Sharma, along with few others died at the spot.

Claim petition filed by the dependents of both the deceased was allowed by the learned Tribunal vide impugned award dated 05.09.2011; whereby a sum of Rs.35,10,000/- was awarded on account of death of Jagdish Lal and a sum of Rs.6,15,000/- was awarded on account of death of Nirmal Sharma along with interest at the rate of 6% per annum from the date of filing of claim petition, till its realization.

On the issue of liability, the learned Tribunal held that Insurance Companies of Tavera as well as Truck were liable to pay the compensation jointly and severally. Thus, the primary question to be decided here is whether the Truck was being driven in a rash and negligent manner and if yes, whether, there was contributory negligence on its part or that the accident occurred due to the rash and negligent driving of Driver of vehicle Tavera, solely. Another question regarding liability is raised by the Insurance Company of the Tavera that as the deceased had hired the vehicle as Taxi and the same was being used in violation of the terms of the insurance policy, it could not be held liable to redeem the owner of the Tavera vehicle.

On the other hand, it has been contended on behalf of the Insurance Company of the Truck that there was no material on record to suggest that the Truck was being driven in a rash and negligent manner. He submitted that learned Tribunal has held the contributory negligence of the Truck merely on the basis of statement of CW4-Rajpal Singh that the Truck was running on high speed without there being any assertion that the Driver of the vehicle was negligent as well. In that circumstance, as no negligence was attributed to the Driver of the Truck, no liability could be fastened upon Insurance Company of the Truck.

Learned counsel for Insurance Company of Tavera has contended that as the Truck was also running on high speed and if an accident has occurred between two vehicles coming from opposite side, there has to be some contributory negligence on part of the Truck. He also contended that in the claim petition itself claimants have averred that Tavera was hired as a Taxi by the deceased and as it was being used in violation of the terms of the insurance policy as vehicle No.PB-30-D-1515 was insured under “Private Car package policy-Zone B” under “Limitation clause”, this policy cover use of the vehicle for any purpose other than a) Hire or Reward (b)…. While actually it was being used as taxi for hire or reward. Hence, no liability could be fastened upon Insurance Company of the Tavera.

Learned counsel for the claimants has contended that the contents of the claim petition were duly explained during the testimony and from the statements of witnesses as well as the content of FIR, it is clear that the Tavera was not hired as a Taxi and it was only taken for personal use from owner of the vehicle who was relative of deceased Jagdish Lal.

Having heard learned counsel for the parties and gone through the paper-book as well as lower Courts records, I find force in the arguments raised on behalf of the appellant Insurance Company of Truck. In the present case, FIR No.182 dated 22.05.2009 was lodged only against the Driver of the Tavera and in the FIR it was recorded that the accident has occurred due to the sole negligence of Driver of Tavera. Even in the statement of eye-witness Rajpal Singh (CW4), he has nowhere stated that the Driver of Truck was driving it rashly and negligently and he has merely stated that the truck was at a high speed. However, it has nowhere come on record whether he was exceeding the permissible speed limit or not; rather, in cross-examination, CW4 has deposed that the Truck was going on his side. Apart from that the negligence of the Driver of the Tavera vehicle is also apparent from the fact that he turned the vehicle before the Truck to the extent that he was able to save himself in this accident, without caring the lives of other.

In the circumstances of this case, even if a vehicle is running at some speed and another vehicle comes before it suddenly, which was otherwise running in its land, then it is not possible for Driver of the vehicle running in its own lane cannot be held negligent. Therefore, in my considered opinion no fault could be attributed to the Driver of the Truck in this accident.

So far the argument of the Insurance Company of Tavera with respect to the vehicle being used as a Taxi is concerned, I find no substance in it. No doubt, in the claim petition, it has been written that the deceased were travelling in a taxi make Tavera that was hired from Mandi Dabwali, however, merely on the basis of this single statement, it cannot be held that it was being used as a Taxi. In her cross-examination i.e. CW1-Vidya Devi (claimant) though admitted the content of the claim petition, however, categorically denied the factum of the 'Tavera' being hired as a Taxi and explained that it was taken from someone known to deceased. CW4-Rajpal Singh also deposed to the same effect that the vehicle was taken from a known person from Dabwali and it was not hired. This fact is further corroborated from the content of the FIR as well in which it is written that the deceased took the vehicle from their neighbour to attend the bhog ceremony.

Therefore, in my considered opinion, learned Tribunal rightly held that as no positive evidence was brought on record from the side of Insurance Company of Tavera to prove that the vehicle was being used as Taxi for hire or reward, the Insurance Company cannot be absolved of its liability to indemnify the owner of the offending vehicle.

Thus, in view of the discussion made hereinabove, **FAO Nos.2520-2012** filed by the Insurance Company of the Truck on the aspect of challenging the fastening of liability upon it, is **allowed**. On the other hand, **FAO No.7095-2011** filed at the instance of Insurance

Company of Tavera is dismissed and appellant Insurance Company shall be responsible to indemnify the owner for payment of the compensation amount.

B- <u>QUANTUM OF COMPENSATION AMOUNT</u>:

The quantum of compensation awarded to the claimants/ appellants is also under challenge and this aspect of the appeal is required to be decided separately.

By way of FAO-213-2012, dependents of deceased have claimed enhancement of compensation. While in FAO-2520-2012 and FAO-7095-2011, Insurance companies have prayed for reducing the same and therefore all these appeals qua the compensation amount are being discussed together.

Learned counsel for the claimants contends that with respect to deceased Jagdish Lal, the deduction on account of personal expenses has been taken to be 1/3rd while as the number of dependents at the time of his death were four, it should have been 1/4th. With respect to deceased Nirmal Sharma, learned counsel submits that nothing has been given by the learned Tribunal on account of future prospects. He further submits that for both the deceased, compensation awarded under the conventional heads is very meager.

On the other hand, learned counsel for Insurance Companies of both vehicles submit that the compensation awarded is on higher side and specifically for deceased Nirmal Sharma, no evidence was brought on record to justify her income, therefore, the same should be adequately reduced.

Having heard learned counsel for the parties and perused the paper-book, I find merit in the contentions raised on behalf of the claimants. At the time of death of Jagdish Lal, number of dependents on him were four, therefore, in view of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, deduction on account of personal expenses should have been 1/4th; rather than 1/3rd. So far as the contention of learned counsel for both the Insurance Companies with regard to the income of deceased Nirmal Sharma is concerned, I do not find much substance in this. It is settled proposition of law that for a self-employed person it is not possible to prove the income by bringing on record the documentary evidence. Even otherwise, if we consider the commercial value of house-hold work, the notional income of Rs.5000/- per month for Nirmal Sharma cannot be said to be on higher side. Further, in view of the principles of law laid down by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, the claimants are entitled to 40% future prospects for deceased Nirmal Sharma. In view of above referred judgments, the claimants are also entitled for compensation under other conventional heads, such as consortium, loss of estate and funeral expenses.

In view of the discussions made hereinabove, the claimants are entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	***Particulars in respect of deceased Jagdish Lal***	***Amount (Rs.)***
1.	*Annual Income of deceased (Rs.19412 x 12)*	*Rs.2,32,944/-*
2.	*Add 50% of Future prospects*	*Rs.1,16,472/-*
3.	*Total Income*	*Rs.3,49,416/-*
4.	*Deduction (1/4th)*	*Rs.87354/-*
5.	*Multiplier of 15 (Rs.2,62,062 x 15)*	*Rs.39,30,930/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (filial & parental) i.e. Rs.44000 x 3*	*Rs.1,32,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.40,95,930/-*
	Amount Awarded by the Tribunal	*Rs.35,10,000/-*
	Enhanced Amount	*Rs.5,85,930/-*

Sr.No.	***Particulars in respect of deceased Nirmal Sharma***	***Amount (Rs.)***
1.	*Annual Income of deceased (Rs.5000 x 12)*	*Rs.60,000/-*
2.	*Add 50% of Future prospects*	*Rs.30,000/-*
3.	*Total Income*	*Rs.90,000/-*
4.	*Deduction (1/3rd)*	*Rs.30,000/-*
5.	*Multiplier of 15 (Rs.60,000 x 15)*	*Rs.9,00,000/-*
6.	*Funeral Expenses*	*Rs.16,500/-*
7.	*Loss of Consortium (filial & parental) i.e. Rs.44000 x 3*	*Rs.1,32,000/-*
8.	*Loss of Estate*	*Rs.16,500/-*

	Total Compensation	*Rs.10,65,000/-*
	Amount Awarded by the Tribunal	*Rs.6,15,000/-*
	Enhanced Amount	*Rs.4,50,000/-*

The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

In view of the above, all the FAO's**,** on the aspect of compensation are **disposed of** in the aforesaid terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the files of other connected cases.

October 20, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*