IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-6890-2015 (O&M)

Jeet Bein alias Jeewan and others

...Appellants

VERSUS

Ajay Kumar and others

...Respondents

(ii) FAO-8293-2015 (O&M)

The Oriental Insurance Co. Ltd. through its Manager

...Appellant

VERSUS

Jeet Bein alias Jeewan and others

...Respondents

(iii) FAO-8294-2015 (O&M)

The Oriental Insurance Co. Ltd. through its Manager

...Appellant

VERSUS

Ashok Kumar and others

...Respondents

Date of Decision: November 29, 2022

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Ekta Thakur, Advocate
for the appellants (in FAO-6890-2015) and
for respondents No.1 to 3 (in FAO-8293-2015).

Mr.R.N.Singal, Advocate
for the appellant (in FAO-8293-2015 & FAO-8294-2015) and
for respondent No.3 (in FAO-6890-2015).

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ARCHANA PURI, J.

These are three appeals, filed to challenge the Award dated 05.08.2015 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Chandu Bhai Bein and his daughter Shobha, in a motor vehicular accident.

Two claim petitions, vis-a-vis, death of Chandu Bhai Bein and his daughter, were decided by the common Award.

On appraisal of the evidence adduced qua death of Chandu Bhai Bein, learned Tribunal had awarded compensation to the extent of Rs.7,91,044/-. The liability to pay the compensation was fastened, jointly and severally upon the driver, owner and insurer of the offending vehicle i.e. Ace four-wheeler auto bearing registration No.CH-01-TA-7589.

FAO-6890-2015 has been filed by legal representatives of deceased Chandu Bhai Bein, thereby, seeking enhancement of the compensation, so awarded by the Tribunal.

Being dissatisfied with the liability, so fastened, appellant-Insurance Company has filed two appeals i.e. FAO-8293-2015 as well as FAO-8294-2015.

The taking place of the accident, as such, has not been disputed by the driver and owner of the offending vehicle. Even though, imputation of rashness and negligence has been disputed, but however, no satisfactory evidence, to so substantiate this plea, has been led.

Ajay Kumar-respondent No.1, being driver of the offending vehicle bearing registration No. CH-01-TA-7589, who was the best person to depose about the manner of taking place of the accident, has not stepped

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into witness box. Even though, owner of the offending vehicle namely Sushil Saxena had stepped into witness, but however, he had not witnessed the accident in question. In these circumstances, it is pertinent to mention that even after passing of the Award, no appeal, as such, has been filed either by the driver or the owner of the offending vehicle.

Suffice to make mention here that claimants had examined PW-1 Manu Bhai, who is an eye witness to the accident in question. In his affidavit, he has categorically imputed rashness and negligence, on the part of respondent No.1-Ajay Kumar, driver of the offending vehicle. Besides the same, he is author of an FIR, which is Ex.P1. Further, he deposed about Ajay Kumar, driver of the offending vehicle, also facing trial qua the accident in question. In the light of such evidence, coming on record, the accident being result of rashness and negligence, on the part of respondent No.1-Ajay Kumar, while driving the offending vehicle, stands amply established. From the evidence on record, even fact of death of Chandu Bhai Bein and his daughter Shobha, also stands amply established.

In this backdrop, now compensation, so worked upon, vis-a-vis, death of Chandu Bhai Bein, requires re-appraisal.

From the evidence brought on record, it is established that deceased Chandu Bhai Bein was 55 years old, at the time of accident. Even though, he is stated to be indulging in the business of sale and purchase of old clothes and his earnings to be Rs.8,000/- per month, but however, no satisfactory evidence, relating to the same, as such, has come on record. In the given circumstances, learned Tribunal has appropriately taken the wages of deceased Chandu Bhai Bein as Rs.7,000/- per month, for being unskilled

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worker. Considering him to be so, the compensation worked upon is Rs.7000-1/3rd as personal expenses and the dependency is taken to Rs.4667/-. Keeping in view the law laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the multiplier of '11' has been applied. Then, compensation has been worked upon as Rs.4667x12x11=Rs.6,16,044/-. Besides the same, Rs.1 lakh has been awarded to claimant-widow, on account of loss of consortium. Furthermore, a sum of Rs.25,000/- has been granted on account of funeral expenses. Besides the same, an amount of Rs.50,000/- has been awarded to minor son Sanjay, only on account of love and affection. However, no compensation has been granted to Manu Bhai, son of deceased, who was aged 32 years, at the relevant time. Thus, the total compensation, so worked upon was Rs.7,91,044/-. However, this compensation requires re-appraisal.

So far as, monthly wages are concerned, the amount so taken i.e. Rs.7,000/- per month, is appropriate one. Even, the deduction to the extent of 1/3rd towards living expenses is appropriate one. However, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, addition of 10% has to be taken as future prospects, considering the age of the deceased. Thus, 10% of the monthly income is **Rs.700/-** and total comes to be **Rs.7,700/-**. Considering the number of dependents of deceased Chandu Bhai Bein, 1/3rd is to be deducted as personal expenses. Taking it to be so, the monthly income is worked upon as **Rs.5,134/-** and annual dependency, as such, is worked upon as **Rs.61,608/-**. Considering the decision rendered in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the

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suitable multiplier to be applied is '**11**' and compensation, as such, comes to be **Rs.6,77,688/-**.

In the case in hand, Rs.1 lakh has been awarded, on account of loss of consortium. In this regard, it is pertinent to mention that three Judge Bench of the Hon'ble Supreme Court, in the decision rendered in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018(18) SCC 130***, had given comprehensive interpretation to the expression '**consortium**' to include '**spousal consortium**', '**parental consortium**' as well as '**filial consortium**'. It is further laid down that '**loss of love and affection is comprehended in loss of consortium**'. Hence, there is no justification to award compensation towards loss of love and affection, as a separate head.

Thus, in the light of the aforesaid, claimants No.1 to 3 and also proforma-respondent Manu Bhai, who was aged 32 years, at the time of accident, are entitled to compensation, on the count of '**loss of consortium**'. In ***Pranay Sethi's case (supra)***, the extent of consortium which should be paid is stated to be Rs.40,000/- and these findings have been further endorsed by the Hon'ble Supreme Court in the case titled as ***'The New India Assurance Company Limited v/s Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020'***. It was further held in ***Pranay Sethi's case (supra)*** that the aforesaid amount should be enhanced by 10% after every three years. As the said judgment is dated 31.10.2017, so there has to be enhancement of 10%, which comes to be Rs.44,000/- as '**loss of consortium**'. In the light of the same, appellants-claimants No.1 to 3 and proforma-respondent Manu Bhai, are entitled to compensation, on the count

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of 'loss of consortium' to the extent of Rs.44,000/- each, and thus, the total comes to be Rs.1,76,000/-.

Besides the aforesaid, even the compensation qua funeral expenses, has been granted on a higher side. As per ***Pranay Sethi's case (supra)***, Rs.15,000/- is to be granted as funeral expenses, which also needs additional enhancement to the extent of 10%, after every three years, which comes to Rs.16,500/-. On similar terms, on account of loss of estate also, another amount of Rs.16,500/- is to be granted. But however, as observed aforesaid, no compensation is to be granted, on the count of loss of love and affection, as done by the tribunal. Working upon the same, the total of the compensation comes to **Rs.6,77,688** + **Rs.1,76,000** + **Rs.16,500** + **Rs.16,500/-** which comes to be **Rs.8,86,688/-**. Therefore, compensation granted by the Tribunal, is raised from **Rs.7,91,044/-** to Rs.**8,86,688/-**.

Proceeding further, learned counsel for the appellant-insurance company has assiduously submitted that the offending vehicle was a '**goods** carriage vehicle' and therefore, it required permit. However, it was being plied without any route permit, at the relevant time and therefore, the offending vehicle was being used, in violation of conditions of the insurance policy. Besides the same, also it has been submitted that at the relevant time, the deceased were travelling in the offending vehicle, as gratuitous passenger and precisely, on this account, the insurance company cannot be saddled with the liability to pay the compensation.

So far as, the submission with regard to the requirement of route permit is concerned, on this count, the submission so made, at the behest of insurance company, holds no ground. As per Section 66(1) of the

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Motor Vehicles Act, permit is not required, where the gross weight of the vehicle in question, does not exceed 3000 kgs. However, as evident from the documents, coming on record, the weight of the offending vehicle, does not exceed the requisite gross weight, as provided under Section 66(1) of the Act and in view of the same, the aforesaid submission, does not hold good and the same is hereby rejected.

However, I find force in the second submission made by learned counsel for the insurance company. Though, during the course of arguments, learned counsel for the appellants-claimants had made submission that deceased along with old clothes for sale, were going in the offending vehicle and they could be taken to be accompanying the '**goods**' and therefore, they be not treated as gratuitous passengers, but however, this submission, does not hold good. It is pertinent to mention that in the pleadings, though, it is an assertion about the deceased to be indulging in the business of sale and purchase of old clothes, but it was not so mentioned about both the deceased travelling along with the '**goods**' i.e. old clothes for sale, at the relevant time. Even though, both the witnesses i.e. PW-1 Manu Bhai and PW-2 Ashok Kumar, in their respective affidavits, have stated about the deceased indulging in the business of sale and purchase of old clothes, but however, they had never stated in their affidavits also, with regard to the deceased travelling along with the goods, at the relevant time. It has come in the cross-examination that they were travelling in the said vehicle including the clothes. Even, if it be so, it is pertinent to make reference to the contents of the FIR, got registered by PW-1 Manu Bhai, which has been proved as Ex.P1. Close perusal of the said document reveals

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that Manu Bhai, who is the author, had stated that all of them were doing business of sale and purchase of old clothes and on that day (on the day of accident), they were to proceed to Daon (Mohali) and they were having bales of old clothes for sale. They had asked driver Ajay Kumar to make them reach the destination i.e. Daon (Mohali) in two rounds, as they were having huge quantity of old clothes, but however, the driver stated that he will be making them reach the destination in one round only and forcibly, he loaded the clothes and thereupon, they sat on the bales. It is further stated by the author of the FIR that in total, they were 10-12 persons. Considering the same and also considering the conditions of the insurance policy, it is evident that the occupants of the goods carriage, were much beyond the seating capacity, which is mentioned as 1+1 in the insurance policy. Thus, number of passengers were much more than the authorized capacity.

In this regard, suffice to make reference to decision rendered in ***National Insurance Co. Ltd. vs. Cholleti Bharatamma & Ors., 2008(2) TAC 374***, wherein, it was observed that the Act does not contemplate that a goods carriage shall carry a large number of persons, with small percentage of goods. In the light of the same, there was violation of terms and conditions of the insurance policy, at the relevant time. Precisely, on this account, the insurance company cannot be saddled with the additional liability of payment of compensation. However, the compulsory insurance coverage against the third party risk is there and in view of the same, the insurance company shall make the recovery of the compensation, vis-a-vis, third party and the insurer shall be liable to be reimbursed by the insured, for the compensation, which it has been compelled to pay to third party,

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under the Award of the Tribunal and and as such, insurance company has the recovery rights qua the owner of the vehicle.

As such, all the three appeals are allowed, in view of the aforesaid terms.

Out of the enhanced compensation, on account of death of Chandu Bhai Bein, Rs.44,000/- towards 'loss of consortium', be disbursed to proforma-respondent Manu Bhai and the disbursement of the remaining enhanced amount shall be made to the claimants-appellants No.1 to 3, in accordance with the apportionment given in the Award dated 05.08.2015, so passed by the Tribunal qua death of Chandu Bhai Bein. The remaining terms of the Award shall remain the same.

November 29, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**

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