2023:PHHC:059269

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 26.04.2023

1. FAO-1450-2009 (O&M)

SUMAN AND ORS …Appellants

Versus

CHIMANA RAM AND ORS. ….Respondents

2. FAO-5436-2009 (O&M)

CHIMANA RAM AND ORS. …Appellants

Versus

SUMAN AND ORS ….Respondents

3. FAO-5437-2009 (O&M)

CHIMANA RAM AND ORS. …Appellants

Versus

NIRMALA AND ORS. ….Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Divya Sarup, Advocate for the appellants (i.e. claimants) in FAO No.1450 of 2009.

Mr. Mohit Garg, Advocate for the appellants (i.e. driver and owner) in FAO Nos.5436 and 5437 of 2009.

Ms. Anamika Mehra, Advocate for respondent No.3/ Insurance Company.

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B.S. Walia, J. (Oral)

[1] This order shall decide FAO Nos.1450, 5436 and 5437 of 2009. FAO Nos.5436 and 5437 of 2009 have been filed by the driver and owner of the offending vehicle with a prayer for modification of award dated 15.01.2009 passed by the learned Motor Accident Claims Tribunal, Hisar by ordering the Insurance Company to make payment of compensation to the claimants in view of the offending vehicle being insured and there being no violation of the terms and conditions of the policy while FAO No.1450 of 2009 has been filed by the claimants seeking modification of the award to the extent of directing the Insurance Company to make payment of the compensation awarded to the claimants and thereafter, to recover the same from the driver and owner of the offending vehicle in view of the decision of Hon'ble the Supreme Court in **Shamanna and another vs. The Divisional Manager, The Oriental Insurance Co. Ltd and others, 2018 (9) SCC 650 and Parminder Singh vs. New India Assurance Co. Ltd. and others, 2019 (7) SCC 217**.

[2] Sole argument of learned counsel for the appellants (i.e. driver and owner) is that the Insurance Company has been exonerated on the short ground of PW-3 Sushil Kumar having admitted in the FIR lodged by him of the offending vehicle having been taken on hire, therefore, compensation not being payable on account of the exclusion clause as contained in the Insurance Policy (Ex.R/1). Relevant extract of the same reads as under:-

> "Policy covers use of the vehicle for the any purpose other than

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(a) hire or reward

(b) to (f) xx xx xx

[3] Admittedly, Sushil Kumar (PW-3) in the FIR, got registered on complaint filed by him, mentions in the complaint of vehicle No.RJ-31-U-0157 in respect of which Insurance Policy (Ex.R/1) was issued having been taken by him and other passengers on hire from the owner. Since the Insurance Policy (Ex.R/1) specifically mentions that it covers use of the vehicle for any purpose other than hire or reward and PW-3 i.e. complainant who was travelling in the vehicle having mentioned in his complaint leading to registration of FIR that the vehicle in which he was travelling had been taken on hire, the Policy (Ex.R/1) issued would not cover the use of the vehicle during the period it was being used for hire i.e. at the point of time when the accident took place.

[4] Faced with the aforementioned position, learned for the appellants (i.e. driver and owner) contends that PW-3 in his cross-examination has categorically denied that the vehicle had been taken on hire**.** He further contends that the FIR Ex.P/1 could have been read into evidence only if the complainant (PW-3) had been confronted with the same.

[5] The aforementioned plea is opposed by learned counsel for respondent No.3/Insurance Company by contending that the statement in cross-examination is merely an improvement to exonerate the driver & owner for as per Ex.P/1 (i.e. FIR No. 16 dated 15.01.2005 registered under Sections 279, 337 and 304-A IPC at Police Station Bhuna, District Fatehabad on the basis of complaint filed by none other than PW-3, it has been categorically admitted that the vehicle in which the complainant and

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others were travelling at the time when it met with an accident had been taken on hire. Learned counsel further contends that the statement of PW-1 i.e. Suman Devi wife of the deceased Des Raj also points to the falsity of the statement of PW-3 in cross-examination for she in her cross examination stated that she was not aware as to what amount was paid to the driver and owner of the vehicle in question.

[6] Be that as it may, once the complainant (PW-3) filed a complaint on the basis of which FIR (Ex.P/1) was registered mentioning therein of the vehicle in which they were travelling having been taken on hire, I do not find any reason whatsoever to interfere with the award passed by the learned Motor Accident Claims Tribunal exonerating the Insurance Company on the basis of exclusion clause as contained in the Insurance Policy (Ex.R/1). Besides, the contention of learned counsel that FIR (Ex.P/1) could have been read into evidence only if the complainant (PW-3) had been confronted with the same, is noted to be rejected since in view of the decision of Hon'ble the Supreme Court in **Rajwati @ Rajjo and others vs. United India Insurance Company Limited and others, Law Find Doc ID #2082054 and Seema and others vs. United India Insurance Company Ltd. and others, Civil Appeal No.8180 of 2022 (arising out of Special Leave Petition (C) No.30755 of 2019)** the strict rules of evidence as applicable in criminal trials, are not applicable in motor accident claim cases. In said case(s) Hon'ble the Supreme Court held that the High Court was not justified in rejecting salary certificate and pay slip of deceased merely on the ground that person issuing said documents was not examined before the Tribunal. Relevant extract of the decision in Rajwati @ Rajjo's case

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(Supra) is reproduced as under:-

> *16. In the case of United India Insurance Co. ltd. vs. Shila Datta & Ors. (2011) 10 SCC 509, this Court held as under :-*
>
> *"10. A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependant family members) before the Motor Accident Claims Learned Tribunal constituted under Section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceeding in terms of and regulated by the provisions of Chapter XII of the Act which is a complete Code in itself. We may in this context refer to the following significant aspects in regard to the Learned Tribunals and determination of compensation by Learned Tribunals:*
>
> *…(ii)The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo moto initiated by the Learned Tribunal.*
>
> *…(vi) The Learned Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to the assist it in holding the enquiry (vide Section 169 of the Act)."*
>
> *18. Similarly, in the case of Kusum Lata & Ors. Vs. Satbir & Ors. (2011) 3 SCC 646, this Court observed that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.*
>
> *19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with*

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compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita and Ors. Vs. Rajasthan State Road Transport Corporation & Ors. (2020) 13 SCC 486 (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases".

20. In view of the above, we do not agree with the view taken by the High Court while rejecting the salary certificate (Exhibit 19) and pay slip (Exhibit 20) of the deceased merely on the ground that the person issuing the two aforementioned documents was not examined before the Learned Tribunal. The 5 (2011) 3 SCC 646 said documents are conclusive proof of the income of the deceased and were also corroborated by the statements of the deceased's wife (Appellant No. 1 herein) and his co-workers. As such, the High Court was not justified in assessing the income of the deceased at Rs.4,836/- per month on the basis of minimum wages fixed by the State at the relevant time. Resultantly, we affirm the findings of the Learned Tribunal so far as they relate to assessing the deceased's income at Rs.11,225/- per month on the basis of aforementioned two documents. Annual income of the deceased, therefore, amounts to, Rs.11,225/- x 12 = Rs.1,34,700/-.

[7] In view of the position noted above, I do not find any ground whatsoever to interfere with the award. Resultantly, appeals (i.e. FAO Nos.5436 and 5437 of 2009) filed by the driver and owner are dismissed.

[8] As regard FAO No.1450 of 2009 filed by the claimants, the same is partly allowed to the effect that Insurance Company shall first

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make payment of compensation to the claimants and then recover the same from the driver and owner in terms of the decisions of Hon'ble the Supreme Court in Shamanna's case (Supra) as well as Parminder Singh's case (Supra). However, insofar as the prayer for enhancement of compensation is concerned, learned counsel for the claimants states that he does not press the same. Relevant extracts of Shamanna's case (Supra) as well as Parminder Singh's case (Supra) are reproduced as under:-

<u>In Shamanna's cas (Supra)</u>

> *12. Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored.*

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> *13. So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan and others (2004) 13 SCC 224 where this Court held that "….that for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer."*

> *14. In the result, the impugned judgment of the High Court insofar as enhancement of the compensation to Rs.4,94,700/- is affirmed. Insofar as direction of the impugned judgment directing the appellants/claimants to recover the compensation from the owner of the vehicle is set aside and the appeal is partly allowed. The first respondent insurance company shall pay the enhanced compensation to the appellants/claimants along with the accrued interest and the insurance company shall recover the same from the owner of the vehicle. No costs.*

In Parminder Singh's case (Supra)

> *7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the Respondent – Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also*

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relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.

7.1. This Court in Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors., held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.4 4 (2018) 9 SCC 650.

7.2. We deem it just and fair to direct the Respondent – Insurance Company to pay the enhanced amount of compensation as indicated in Para. 6 above, to the Appellant within a period of 12 weeks from the date of this judgment. The Respondent – Insurance Company is directed to make out a Demand Draft in the name of the Appellant, which can be used for his care for the rest of his life. The Respondent – Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks.

[9] In the light of the position noted above, the appeal (i.e. FAO No.1450 of 2009) filed by the claimants is partly allowed to the extent as noted above and respondent No.3 i.e. Insurance Company is directed to pay the amount of compensation to the claimants and then recover it from respondent Nos.1 and 2 i.e. driver and owner, whereas insofar as the enhancement of compensation is concerned, although the said point has been raised, but learned counsel has given up the same.

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[10] Accordingly, award dated 15.01.2009 passed by the learned Motor Accident Claims Tribunal, Hisar is modified and Insurance Company is directed to make payment of compensation along with interest to the claimants as awarded by the learned Tribunal and thereafter to recover the same from the owner and driver. Payment be released to the claimants within four weeks from the date of receipt of certified copy of the order.

(B.S. Walia)
Judge

26.04.2023
'Amit'

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

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