IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 12.12.2022

Date of pronouncement:09.01.2023

1. FAO-287-2018 (O&M)

National Insurance Co. Ltd. …..Appellant

Versus

Sajalpreet Kaur and others …..Respondents

2. **FAO-2689 of 2018**

Sajalpreet Kaur and others …..Appellants

Versus

National Insurance Co. Ltd. and others …..Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Anish Bansal, Advocate,
for appellant Nos.1 to 4/ claimants in FAO-2689-2018 and
for respondent Nos.1 to 5/claimants in FAO-287-2018.

Mr.Deepak Suri, Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant/ Insurance Company in FAO-287-2018 and
for respondent No.1/ Insurance Company in FAO-2689-2018.

Mr. Sumit Kadyan, Advocate, for
Mr. G.S Madan, Advocate
for repondent No.6 in FAO-287-2018 and
for respondent No.2 in FAO-2689-2018.

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HARKESH MANUJA, J.

CM-891-CII-2018 in FAO-287-2018

This is an application seeking condonation of delay of 9 days in filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of transition of file at different places, thus, the same is allowed and delay of 9 days in filing the appeal is condoned.

CM-890-CII-2018 in FAO-287-2018

This is an application seeking condonation of delay of 8 days in re-filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay, thus, the same is allowed and delay of 8 days in re-filing the appeal is condoned.

CM-9888-CII-2018 in FAO-2689-2018

This is an application seeking condonation of delay of 176 days in filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of ill-health of the mother of the deceased, thus, the same is allowed and delay of 176 days in filing the appeal is condoned.

MAIN CASE:

This order of mine shall dispose of two appeals bearing FAO No. 287 of 2018 titled as National Insurance Co. Ltd. Vs Sajalpreet Kaur and others (filed by Insurance Company for setting aside the award) and another bearing FAO No. 2689 of 2018 titled as Sajalpreet Kaur and others Vs. National Insurance Co. Ltd. and others (filed by claimants/appellants for enhancement of compensation).

For convenience, the facts are taken from FAO No. 287 of 2018 i.e. the appeal filed on behalf of the Insurance Company.

Brief facts of the case are that on 12.06.2014, deceased Gurpreet Singh was travelling with respondent No.6 / driver Satnam Singh in car bearing registration number PB-11-BG-8867 (hereinafter referred as offending vehicle) when it struck against a pillar and Gurpreet Singh succumbed to his injuries. DDR regarding this incident was registered at police station Lahori Gate, Patiala by respondent No.6 / driver Satnam Singh. Vehicle in question was owned by Dharminder Kaur, who also happens to be the wife of deceased.

A claim petition was filed on behalf of the dependants of deceased, including her wife Dharminder Kaur, before the learned Motor Accident Claims Tribunal, Patiala (in brevity, 'the Tribunal') seeking compensation on account of death of Gurpreet Singh. Learned Tribunal in view of the statement of CW2-Saleem Khan, who was eye-witness to the accident, held that accident was caused due to the rash and negligent driving of respondent No.6 / driver, especially considering the fact that he never appeared before the learned Tribunal to record his statement. Further, on the basis of documentary proof of pay slip of deceased, corroborated by the testimony of CW3- Dinesh Mehta, learned Tribunal assessed his monthly income at the rate Rs. 70,109/- per month and awarded compensation in the following manner:

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs.82,03,104/-
2.	Funeral expenses	Rs.25,000/-
3.	Medical Expenses	Rs.23,937/-
4.	Loss of love and affection	Rs.1,00,000/-

	Total	Rs. 83,52,041/-

One of the grounds taken by the appellant/ Insurance Company before learned Tribunal was that in this case, wife of deceased was also a claimant, while being owner of the offending vehicle she should have been respondent in the present case. In this context, learned Tribunal held that initially, an application was made on her behalf, for deletion of her name as claimants and for impleading her as respondent, however that application was dismissed by the learned Tribunal as it was presented at the fag end of the case. It was further held that though wife/owner was not dependent upon deceased, however claimants who were the children of deceased, being legal representatives as well as dependents, were entitled to get compensation on account of his death in road accident.

It is the said award dated 16.08.2017 which has been challenged by way of present two appeals by both the respective parties.

Learned counsel for the appellant/ Insurance Company contends that as the owner of the offending vehicle was not impleaded as respondent before the learned Tribunal, the claim petition was not maintainable qua Insurance Company, as its liability was only to indemnify the owner and if owner of offending vehicle was not made a party as respondent, Insurance Company could not be held liable to pay the compensation. He also contents that liability of Insurance Company was only towards third party and the husband of the owner was present in the car in the capacity of owner and in that circumstance Insurance Company was not liable to indemnify. In support of his contention he places his reliance upon the following judgments:-

- **New India Assurance Company Ltd vs Sadanand Mukhi and others** reported as 2009 (1) R.C.R. (Civil) 817
- **Dhanraj vs New India Assurance Co. Ltd. and another** reported as 2004 (4) R.C.R. (Civil) 786
- **Oriental Insurance Co. Ltd. vs Jhuma Saha and others** reported as 2007 (1) R.C.R. (Civil) 761
- **Ramkhiladi & Anr. vs United India Insurance Company & Anr.** reported as 2020 (1) R.C.R. (Civil) 638
- **Oriental Insurance Co. Ltd. vs Rajni Devi & Ors.** reported as 2008 (4) R.C.R. (Civil) 905.

He further contends that in this case, negligence on part of driver was not established and there was no material to this effect in the DDR recorded in this case. He also contents that compensation awarded was on higher side and thus required to be reduced.

Per Contra, learned counsel for the claimants contends that non-impleading the owner as respondent already stands dealt with by the learned Tribunal and no compensation was awarded to owner/ wife of the deceased as legal representative of the deceased and she was considered only as natural guardian of the other legal representatives i.e. Children and mother of the deceased. He also contends that the policy pertaining to the offending vehicle was a “comprehensive policy” and not an “Act policy” and therefore, Insurance Company was liable to compensate even if the husband of the owner was an occupant of the car. With respect to negligence of driver, he contends that as DDR was recorded by respondent No.6/ driver himself, apparently he would not attribute negligence to himself. With respect to quantum of compensation, he contends that only income tax should have been deducted from the salary of deceased. He also contends that deceased, being permanent/ regular employee, was entitled for 30% future prospects and conventional heads should also have been appropriately awarded.

Question of Liability

Having heard learned counsel for the parties and gone through the records of the case, I am convinced that the judgments cited by the appellant/Insurance Company does not hold that in case of injury or death of occupant / owner / driver, Insurance Company is not liable to pay the compensation. It is in fact only in the case when insurance policy of vehicle is only the ‘act policy’. In this regard judgment of Hon’ble Apex Court in **"National Insurance Company Ltd. vs Balakrishnan & Another"** passed in CIVIL APPEAL NO. 8163 OF 2012, throws more light on the exact position which is that in case of injury or death of owner / driver / occupant of the car or motorbike, insurance company is liable if policy of the vehicle is a ‘comprehensive/ package policy’ and the Insurance Company is not liable if it is only an ‘act policy’. Conclusion para of this judgement is worth reproducing here:

> *“21. In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act Policy” stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority,*

> *has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."*

Thus, in view of the above, present case boils down to the point, as to whether the policy of the vehicle was an "act policy" or "a comprehensive policy". Apart from that, reliance can also be placed on judgement of a co-ordinate bench of this Court in **"Manpreet Kaur vs Sukhdev Singh and another"** reported as 2021 (4) R.C.R. (Civil) 71, wherein in view of distinct, separate and independent legal status of the Claimant/mother, claim petition was allowed when the owner/ driver of the offending vehicle was father and the claim petition filed by the legal heirs of the deceased/father to the exclusion of their mother, and wife being separate legal entity from the husband was upheld, holding that they are fully vested with lawful rights to claim compensation on account of death of their father.

Now, a perusal of the Insurance policy in the present case shows that the policy taken for the vehicle in question has been comprehensive policy and therefore, Insurance Company is liable to pay the compensation even if deceased is considered to be the owner of the vehicle. Mere fact that the owner of the vehicle, who is the wife of deceased, has not been impleaded as a respondent will not decisively affect the case of the appellant. This point has already been discussed by the learned Tribunal and I am in respectful agreement with its finding. It is worth noting that to cure this lacuna, application to implead the wife as respondent was made before the learned Tribunal which was dismissed, stating it to have been made at the fag end of the case. In these circumstances, this argument of the learned counsel for the appellant is purely technical, without having any substance and is, therefore, discarded. In any case, other claimants being legal representative of the deceased and dependents on him are entitled for compensation.

Another argument by learned counsel for the appellant to the effect that in this case, negligence on part of driver/respondent No. 6 could not be proved, is without any merit. Obviously, there was bound to be no material in DDR which would attribute negligence to driver as it was registered at his instance only and he would describe the facts in a manner so that he could be exonerated. However, a portion of his own statement that near the place of accident he could not keep control over the car all of a sudden, clearly implies that he was driving the car rashly and negligently and therefore, its conjoint reading with statement of CW2- Salim Khan who was an eye-witness to the accident, learned tribunal rightly held that accident occurred due to the rash and negligent driving of driver/ respondent no 6.

Quantum of compensation

With respect to the income of the deceased, I find merit in the argument of learned counsel for the claimants that, as deceased was an income tax payee, apart from the income tax deduction, no other component of the salary could be deducted to assess the net income. Reliance in this regard can be placed on **National Insurance Company Ltd. vs Birender and Ors.** reported as 2020(1) R.C.R. Civil 694 wherein, it was held that any deduction from the gross- salary other than tax amount cannot be reckoned. However, the pension being received by the family is liable to be deducted from the monthly income therefore his monthly income should have been assessed at Rs. 83,089 (Rs.94089 – Rs.8000 - Rs.3000). Other point made by the learned counsel for the claimants also holds merit that deceased was in a permanent job and therefore, in view of **"National Insurance Company Vs. Pranay Sethi and others"**, reported as 2017(4) RCR (Civil) 2009, it cannot be denied that as the age of deceased was 49 years, future prospects should be awarded @ 30% instead of 25%.

In addition compensation awarded under conventional heads also requires to be reassessed in view of **Pranay Sethi's Case (supra)** and therefore, Rs 16500/- are awarded for funeral expenses, Rs 16,500/- for loss of estate, Rs.1,76,000 (Rs.44000x4) are awarded as (parental and filial) consortium and compensation awarded under the head of loss of love and affection is liable to be set aside in view of the law laid down by the Hon'ble Supreme Court in case of "**Satinder Kaur @ Satwinder Kaur & Others. Versus United India Insurance Co. Ltd."** reported as 2020(3) R.C.R Civil 75.

Thus, in view of the discussion made hereinabove, the claimants herein are entitled for following compensation, as detailed in the table:-

Sr.No.	Particulars	Amount(Rs.)
1.	Annual income of deceased	Rs.9,97,068/-
2.	Income after adding 30% of future prospects	Rs. 12,96,188/-
3.	After deduction of 1/4th	Rs. 9,72,141/-
4.	Multiplier of 13 as per age of 49 years	Rs. 1,26,37,836/-
5.	Funeral Expenses	Rs. 16,500/-
6.	Loss of Consortium (Rs.44,000x4)	Rs. 1,76,000/-
7.	Loss of Estate	Rs. 16,500/-
8.	Medical Expenses	Rs. 23,937/-
	TOTAL COMPENSATION:	Rs.1,28,70,773/-
	Amount Awarded by the Tribunal	Rs.83,52,021/-
	Enhanced Amount	Rs.45,18,752/-

However, the grant of interest @ 7% 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.

Consequently, the appeals are disposed off in the above terms.

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

__.01.2023 **(HARKESH MANUJA)**
sonika **JUDGE**

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