IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-1049-2019 (O&M)

Manju and others

...Appellants

VERSUS

Bhim and another

...Respondents

(ii) FAO-1881-2019 (O&M)

Shri Ram General Insurance Company Limited

...Appellant

VERSUS

Smt.Manju and others

...Respondents

(iii) FAO-1975-2019 (O&M)

Shri Ram General Insurance Company Limited

...Appellant

VERSUS

Ram Kumar and another

...Respondents

(iv) FAO-2240-2019 (O&M)

Bhim

...Appellant

VERSUS

Shree Ram General Insurance Company Ltd. and others

...Respondents

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(v) FAO-2246-2019 (O&M)

Bhim

...Appellant

VERSUS

Shree Ram General Insurance Company Ltd. and another

...Respondents

Date of Decision: September 02, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Arora and Mr.Vipul Sharma, Advocates
for the appellants (in FAO-1049-2019),
for respondents No.1 to 4 (in FAO-1881-2019) and
for respondents No.2 to 5 (in FAO-2240-2019).

Mr.Rajbir Singh, Advocate
for the appellant (in FAOs-1881 and 1975-2019),
for respondent No.1 (in FAOs-2240 and 2246-2019) and
for respondent No.2 (in FAO-1049-2019).

Mr.Nilesh Bhardwaj, Advocate
for the appellant (in FAOs-2240 and 2246-2019),
for respondent No.1 (in FAO-1049-2019)
for respondent No.5 (in FAO-1881-2019) and
for respondent No.2 (in FAO-1975-2019).

None for respondent No.1 (in FAO-1975-2019) and
none for respondent No.2 (in FAO-2246-2019).

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ARCHANA PURI, J.

This is bunch of five appeals, filed by the appellants to assail the Award dated 10.10.2018 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Ram Sewak and injuries sustained by Ram Kumar, in a motor vehicular accident.

For the convenience of discussion, the parties are referred to, as

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making appearance before learned Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 21.10.2015, at about 12.15 a.m. (midnight), Ram Sewak and Ram Kumar were travelling in a three wheeler bearing registration No.HR-68A-4061, which was driven by respondent No.1-Bhim, at a very high speed and in a rash and negligent manner. When Bhim reached Stadium Sector 21 Panchkula and was negotiating a deep curve to reach for main road, he lost control over the vehicle, as a result whereof, three-wheeler turned turtle, due to over-speed. Both Ram Sewak and Ram Kumar were going back to their homes in Rajiv Colony, from Sector-26, Kisan Mandi, after their jobs.

Ram Sewak was taken to General Hospital, Sector-6, Panchkula, where from, he was referred to PGI, Chandigarh, where he died on 25.10.2015. Ram Kumar had also sustained grievous head injuries. He went into coma and after operation, his half frontal bone was removed. FIR No.383 dated 25.10.2015 under Sections 279 and 337 IPC was registered at Police Station Sector-5, Panchkula.

The claim petition qua death of Ram Sewak was filed by his widow as well as three minor children. Even, Ram Kumar had filed a separate claim petition for seeking compensation, on account of injuries sustained in the accident in question.

On appraisal of the evidence, brought on record, learned Tribunal had granted compensation to the LRs of Ram Sewak to the extent of Rs.15,91,540/-, whereas, an amount of Rs.3,89,165/- was granted to Ram Kumar, qua injuries sustained by him in the accident in question. The respondents i.e. Bhim and insurance company were held jointly and

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severally liable, to pay the compensation amount to the claimants. However, the insurance company was further held entitled to recover the compensation amount from respondent No.1-Bhim, being driver-cum-owner of the offending vehicle.

Being aggrieved by the aforesaid Award, claimants Manju-widow as well as three minor children of deceased Ram Sewak has filed **FAO-1049-2019**, for seeking enhancement of the compensation.

Being aggrieved, the insurance company has also filed two appeals i.e. **FAO-1881-2019** and **FAO-1975-2019**, thereby, challenging the liability fastened upon it, vis-a-vis, compensation awarded on account of death of Ram Sewak and injuries sustained by Ram Kumar.

To assail the 'pay and recover' rights granted to the insurance company, Bhim Singh, driver-cum-owner of the three-wheeler bearing registration No.HR-68A-4061 has also filed two separate appeals i.e. **FAO-2240-2019** and **FAO-2246-2019**.

So far as, the factum and manner of taking place of the accident is concerned, the same, as such, is not disputed anymore and therefore, there is no necessity to further dwell on these aspects.

Undisputedly, the vehicle involved in the accident is three-wheeler (goods), as deciphered from the Registration Certificate, which has been proved as Ex.R3. The insurance company has raised the plea about offending vehicle to be not having route permit and therefore, there was violation of terms and conditions of the policy.

Section 66 of the Motor Vehicles Act, reads as herein given:-

> **66. Necessity for permits.** - (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle

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> in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:
>
> Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:
>
> Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not:
>
> Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.
>
> [Provided also that where a transport vehicle has been issued any permit or permits, as well as a licence under this Act, such vehicle may be used either under the permit, or permits, so issued to it, or under such licence, at the discretion of the vehicle owner.]

Further, sub-clause(3) provides that the provisions of sub-section (1) shall not apply, (a)..(b)..(c)..(d)..(e)..(f)..(g)..(h)..(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms, (j)...(k)...(l)..(m)..(n)..(o)..(p)..(q).

In the light of the aforesaid provisions, it is pertinent to mention that Ex.R3, contains the recitals of the gross weight of the vehicle in question to be 1060 kgs. Thus, it falls in the category (i) of the aforesaid provision of Section 66(3) of the ibid Act, which clearly specifies that there is no necessity of route permit, vis-a-vis, goods vehicle, the gross weight of which, does not exceed 3000 kilograms. Thus, the offending vehicle falls in the exempted category.

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Such being the position, has also been fairly conceded by learned counsel for the insurance company and he submits that there was no requirement of permit, qua the usage of the vehicle in question. However, learned counsel for the insurance company has assiduously submitted that both the occupants i.e. deceased Ram Sewak and injured Ram Kumar, were travelling in the goods vehicle, therefore, they being gratuitous passengers, the insurance company is not liable to pay the compensation and subsequently, recover the same.

Throughout the arguments, much emphasis has been laid upon, on the contents of the FIR, copy whereof is Ex.P9, which was got lodged by Jeevan Kumar s/o Prithvi Pal. On the basis of recitals of this FIR, it is submitted by learned counsel for the insurance company that the goods vehicle was used for taking the passengers and number of persons, was much more, which included 4-5 other persons, besides Ram Sewak and Ram Kumar. Therefore, from this FIR, it is evident that the offending vehicle was being used as passenger vehicle.

It is further submitted by learned counsel for the insurance company that the FIR in question, has been relied upon by the claimants and therefore, it ought not to be taken into consideration. However, the aforesaid submission is bereft of merits.

By the very nature of the things, the FIR is only aimed at intimating of the occurrence to the police. It cannot and does not purport to be a complete encyclopedia of all the attending circumstances. It is categoric claim of the claimants that Ram Sewak and Ram Kumar were the vegetables sellers. They had started their journey from Kisan Mandi in

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Sector-26, Panchkula, after participating in the sale of vegetables in the said Kisan Mandi. Ram Kumar-injured has stepped into witness box as PW-2 and he has categorically stated about his indulgence in the sale of fruits and vegetables and further, has also deposed about the manner of having called upon Bhim, to transport his left over vegetables, after doing work in Kisan Mandi, on 21.10.2015. He categorically further stated that after loading the bags, they had boarded the offending vehicle. He further deposed, thereby, imputing rashness and negligence, on the part of Bhim, while driving three-wheeler bearing registration No.HR-68A-4061, as a result whereof, it turned turtle, on the curve near Stadium. Further, he had also deposed about kind of injuries sustained by him in the accident in question.

In view of the testimony of Ram Kumar and also other circumstances, spelt out, from the material on record, it is evident that though the FIR was tendered into evidence by the claimants, to establish about taking place of the accident, but however, this FIR, as such, solely cannot be taken into consideration to conclude about the manner of boarding of the deceased and injured, in the three-wheeler and manner of taking place of the accident. However, it is pertinent to mention that the FIR was simply tendered into evidence, which was got recorded by Jeevan Kumar, who was having no concern, be it owner-cum-driver of the vehicle in question or occupant of the said vehicle or being affected in any manner, by the impact of the accident. The insurance company had not bothered to examine Jeevan Kumar, author of the FIR. In these circumstances, not much sustenance can be drawn from the contents of the FIR.

However, one thing becomes certain from the material on record

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about the deceased and injured to be accompanying their vegetables, at the time of boarding the three-wheeler in question. Admittedly, the vehicle involved in the accident, is a goods vehicle and not contract carriage vehicle. Insofar as, goods carriage vehicle is concerned, Section 147 of the Motor Vehicles Act, makes an exception to the passengers, to accompany the goods as owners or their representative. As per Section 147 of the ibid Act, the liability to pay the compensation to the owner of the goods or his authorized representatives, travelling in a goods vehicle, is covered under the Act Policy. The provisions make it clear that there is no total prohibition, as to the coverage of liability for the persons travelling in a Goods Vehicle, other than the owner of the goods or his representative. The insurer is absolved from its liability for payment of compensation only, in the case, where the injuries or death occurred to an individual, travelling in the goods carriage, not in the capacity as owner of goods.

In the light of Section 147 of the ibid Act, a non-fare paying passenger is different from the owner of the goods. But by virtue of the statutory fiction under Section 147 of the Motor Vehicles Act, the owner of the goods or the representative of the owner of the goods, are covered under basic premium.

Thus, Ram Sewak and Ram Kumar, being occupants of the three-wheeler in question, the claimants qua death of Ram Sewak and claimant-injured Ram Kumar are entitled to claim compensation from the insurance company. Precisely, on this account, the insurance company, as such, cannot be exonerated from the liability, by exercising 'pay and recover' clause. In fact, the insurance company is liable to pay the

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compensation to the claimants.

As far as, the quantum of compensation qua death of Ram Sewak is concerned, Manju-widow of deceased Ram Sewak as well as Ram Kumar, another companion of Ram Sewak, have categorically stated about Ram Sewak to be fruit and vegetable vendor and was earning Rs.15,000/- per month. However, learned Tribunal had treated Ram Sewak as semi-skilled person and taken his daily earnings as Rs.350/-. However, while excluding 5 to 7 days being Sundays and non-working days, due to non-availability of work, the monthly income of deceased Ram Sewak was taken as Rs.8050/- (i.e. Rs.350 per day x 30=10500-2450 [for 7 non-working days]). Thus, the established income was taken as Rs.8050/-. Considering the age of the deceased to be approximately, to be 39 years and 9 months, i.e. below 40 years, as evident from his Aadhaar Card Ex.C11, where the date of birth is mentioned as 01.01.1976, addition of 40% was made on the count of 'future prospects' and his monthly earnings were taken as Rs.11270/- (8050+3220). Thereupon, 1/4th was deducted, on the count of 'personal expenses' and residue, loss of dependency worked out to be Rs.8453/-. As per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, multiplier of '15' was applied and the compensation as worked upon as Rs.15,21,540/-. Besides the same, Rs.15,000/- each was granted on the counts of 'last rites and transportation' and 'loss of estate' on each count. Also, further an amount of Rs.40,000/- was granted to claimant No.1-Manju, towards 'loss of consortium'. Thus, total compensation was worked upon as Rs.15,91,540/-.

So far as, the computation of compensation by learned Tribunal,

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with regard to the earnings of the deceased, as well as the deduction made, on the count of ‘personal expenses’, application of multiplier as well as the compensation qua the conventional heads i.e. ‘funeral expenses’, ‘loss of estate’ and ‘loss of consortium’ to widow, the same has been appropriately granted by learned Tribunal. However, on the count of ‘loss of consortium’, no amount of compensation has been granted to claimants No.2 to 4.

As per decision rendered in ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, all the claimants/dependents are entitled to compensation, on the count of ‘loss of consortium’, be it ‘parental’, ‘spousal’ or ‘filial’. Taking into consideration, claimants No.2 to 4, to be children of deceased Ram Sewak, all of them are entitled to compensation, on the count of ‘parental’ consortium. As held in ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation payable, at present, on the count of ‘loss of consortium is to the extent of Rs.48,400/- i.e. Rs.48,400x3=Rs.1,45,200/-.

The compensation amount already awarded shall be disbursed and apportioned, as ordered by learned Tribunal. However, on the amount of compensation, as now awarded, on the count of ‘loss of consortium’ i.e. Rs.1,45,200/-, the appellants-claimants No.2 to 4, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the appeal, till realization of the enhanced amount of compensation and the same be disbursed to them, in equal shares.

In view of the aforesaid observations, appeals filed by

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appellants-claimants i.e. **FAO-1049-2019** and appeals filed by appellant-Bhim i.e. **FAO-2240-2019** and **FAO-2246-2019** are hereby allowed, whereas, appeals filed by the insurance company i.e. **FAO-1881-2019** and **FAO-1975-2019**, are hereby dismissed.

September 02, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**

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