
(2015) 11 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : FAO Nos. 1808 of 2010 and 3716 of 2009 (OandM)

Anju Bala and Others

APPELLANT

Vs

Mohammad Ahmed and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 149(2)(c), 149(2)(i)(a), 192(a)

Citation : (2015) 11 P&H CK 0076

Hon'ble Judges : Surinder Gupta, J.

Bench : Single Bench

Advocate : Ajay Kamboj, Advocate for P.S. Jammu, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Surinder Gupta, J.—Both the appeals captioned above are being taken up together as the same arise from award dated 17.04.2009 passed by Motor Accident Claims Tribunal, Sirsa (later referred to as "the Tribunal") awarding compensation for death of Surender @ Babbu (deceased) in accident with truck No. RJ-13-GA-0135 (later referred to as "the offending vehicle") and allowed recovery rights to National Insurance Company Ltd. against appellant-Shaukat Ali (FAO no. 3716 of 2009) on the ground that accident had taken place in Haryana and the truck was having the route permit for State of Rajasthan.

2. The case of claimants, in brief, is that on 21.10.2007, deceased alongwith Mahender Singh son of Bahadar Ram, resident of village Nanuana, District Sirsa, conductor on truck No. PB-30-D-9065 after unloading milk at Milk Plant Rania, was going to village Nanakpur. The deceased was driving the truck. When they reached in the area of village Chak Raiyan, the offending vehicle came from opposite side. It was being driven by respondent no. 1-Mohammad Ahmed in a rash and negligent manner and hit the canter/truck of the deceased resulting in grievous injuries on his person as a result of which he died at the spot.

3. As the issue in these appeals relate to recovery right allowed to insurer of

offending vehicle against the appellant- Shaukat Ali (FAO No. 3716 of 2009) and seeking enhancement of compensation in FAO No. 1808 of 2010, the detail facts of the case are not being discussed.

FAO No. 1808 of 2010

4. The deceased was 22 years of age. The Tribunal assessed his monthly income as Rs. 4000/-. As he was unmarried, the Tribunal deducted 50% of his income towards personal expenses and by applying multiplier of 14, assessed the amount of dependency as Rs. 3,36,000/-. A sum of Rs. 10,000/- was awarded towards funeral expenses while allowing total amount of compensation as Rs. 3,46,000/-.

5. As per observations of Hon''ble Apex Court in case of Rajesh and Others Vs. Rajbir Singh and Others, , the claimants are also entitled to addition of 50% in the income of deceased towards future prospects. Hon''ble Apex Court has reiterated the view taken in case of Rajesh (supra) in case of Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others .

6. Learned counsel for respondent no. 3-Insurance Company has argued that the matter for grant of compensation towards future prospects is pending before larger Bench of Apex Court in the reference made in case of National Insurance Co. Ltd. Vs. Pushpa--> .

7. In Pushpa's case (supra), while differing with the view taken in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it was observed as follows:-

"18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self- employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

8. In Rajesh's case (supra), a three Judges Bench of Hon''ble Apex Court has observed in para 11 and 12 as follows:-

"11. Since, the Court in Santosh Devi's case (supra) actually intended to follow the principle in the case of salaried persons as laid in Sarla Verma's case (supra) and to make it applicable also to the self- employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the

deceased was in the age group of 40 to 50 years.

12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

9. Reference was made to a larger Bench of Hon"ble Apex Court in case of Pushpa (supra), on 02.07.2014. In the case of Munna Lal Jain (supra) decided on 15.05.2015, a three Judges Bench of Hon"ble Apex Court allowed future prospects in the case of self-employed persons following the observations made in case of Rajesh (supra). As the view taken in case of Rajesh (supra) has been followed by the Hon"ble Apex Court in Munna Lal Jain's case (supra), the claimants are entitled to addition of 50% in the income of deceased towards future prospects.

10. As per observation in the case of Sarla Verma (supra), the multiplier attracted to this case is 18. The claimants were also entitled to compensation for the loss of love and affection and estate, which is quantified as Rs. 1 lac.

11. In view of my observation above, the compensation to which the claimants are entitled is tabulated as follows:-

12. The appeal is accepted. The award of the Tribunal is modified and the compensation allowed by the Tribunal is enhanced from Rs. 3,46,000/- to Rs. 7,73,000/- for the death of Surender @ Babbu. The enhanced amount of compensation will carry interest 7.5% per annum as allowed by the Tribunal from the date of filing of the petition till actual realization. Fifty percent of enhanced compensation shall be paid to Hari Chand and Ram Piari parents of deceased and remaining shall be shared equally by other claimants. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed Rs. 20,000/-.

FAO No. 3716 of 2009

13. The Tribunal allowed right of recovery of compensation awarded to the claimants from owner of the offending vehicle on the ground that offending vehicle was having the route permit for plying the vehicle only in the State of Rajasthan and not in the State of Haryana where the accident took place. On the above matter, a coordinate Bench of this Court in the case of National Insurance Co. Ltd. vs. Gamdoor Singh and others (FAO No. 758 of 2014) decided on 06.02.2014, has observed as follows:-

".....Section 149 of the Motor Vehicles Act allows for various defences that could be taken and Section 149(2)(c) makes a condition excluding of use of the vehicle for the purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, it could be taken as a permissible

ground of defence. In effect it means if a transport vehicle has a permit for a particular purpose of use but the permit is flouted and put for some other purpose and a clause of insurance provides for exclusion of such liability, then it shall be permissible to take that in defence. A mere fact that the vehicle was being driven outside the route permit is no defence which is available for an insurer but it only means that the owner will become susceptible for prosecution under Section 192 (a) of the Motor Vehicles Act which is still not a ground for an insurer to exclude the liability....."

14. In another case titled Sandeep vs. The Oriental Insurance Company Limited and others (FAO No. 6897 of 2011) decided on 29.01.2013, the offending vehicle had permit for plying the same in the State of Rajasthan and the accident had taken place in the State of Haryana and it was observed by a coordinate Bench of this Court that violation of terms of permit means a goods vehicle cannot be seen to carry passengers except to the extent to which Section 147 of the Motor Vehicles Act (later referred to as "the Act") itself permit. If a vehicle strays from a route to which the permit is granted will result in other consequences for violation of permit conditions at the instance of transport authorities.

15. A permit is usually issued on so many terms and conditions. The violation of all terms and conditions mentioned in the permit does not allow the Insurance Company to avoid its liability. A close reading of Section 149 (2) (i) (a) of the Act would show that it is only the user of transport vehicle for the purpose not allowed by the permit would enable the insurance company to defend the action to satisfy an award in a motor accident where the risk is covered by a policy obtained under Section 147 of the Act.

16. Under the circumstances, the Tribunal ought to have provided full right of indemnity to the owner and driver under the contract of insurance. Accordingly, the appeal (FAO No. 3716 of 2009) is accepted and award of the Tribunal is modified to the extent that respondent no. 3-Insurance Company shall take full liability to pay the entire compensation amount as awarded in this case.