
(2014) 09 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 6466 and 6467 of 2012 (O&M)

IFFCO Tokio General Insurance Company Limited

APPELLANT

Vs

Akbari and Others

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173

Motor Vehicles Act, 1988 — Section 128

Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2015) ACJ 2515 : (2015) 177 PLR 684 : (2015) 2 RCR(Civil) 840

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : D.K. Prajapati and R.S. Madan, Advocates for the Appellant; Ashish Gupta, Advocates for the Respondent

Judgement

Rekha Mittal, J.—By way of this order, I shall dispose of FAO No. 6466 of 2012 and 6467 of 2012 as these are the off shoot of common award dated 8.9.2012 passed by the Motor Accident Claims Tribunal, Nuh (in short "the Tribunal") in regard to death of Mohd. Farrukh and Rashidan, travelling on a motor cycle driven by Mohd. Farrukh on the fateful day of 28.10.2009 at about 5 p.m. due to alleged rash and negligent driving of Tata 407 bearing No. HR-55G-6466 by its driver, Ali Mohd. Notice to respondents No. 6 to 10 (in FAO No. 6466 of 2012) and Nos. 5 to 9 (in FAO No. 6467 of 2012) could not be issued as counsel for the appellant failed to file their correct addresses. On August 21, 2013, notice sent to respondents No. 6 to 10 received back with the report "not residing at the given address". Subsequent thereto, three opportunities have been allowed to the appellant to file correct addresses of respondents No. 6 to 10 but the appellant failed to comply with the orders. In the circumstances of the present case, the appellant is not entitled to any further opportunity for the purpose and as a consequence, the appeals against respondents No. 6 to 10 (in FAO No. 6466 of 2012) and Nos. 5 to 9 (in FAO No. 6467 of 2012) stand dismissed.

2. The learned Tribunal awarded compensation in favour of the claimants-

respondents in regard to death of the aforesaid persons.

3. The insurance company is in appeal to challenge quantum of compensation on the plea that as Mohd. Farrukh allowed two persons to sit on the pillion of the motor cycle, he himself attributed to the occurrence and, therefore, 50% of compensation computed by the Tribunal is liable to be reduced attributable to negligence on the part of the motor cyclist. In support of his contention, he has relied upon judgment of this Court in Angrejo Devi and others v. Jai Parkash and others (2012-4)168 PLR 604.

4. Counsel for the claimants/contesting respondents has submitted that the mere fact that three persons were travelling on the motor cycle itself is not sufficient to hold that the motor cyclist has attributed, in any manner whatsoever in causing the accident or in other words, to say it to be a case of contributory negligence. For this purpose, he has referred to judgment of a Co-ordinate Bench of this court in United India Insurance Company Limited Vs. Ram Murti and Others, .

5. I have heard counsel for the parties and perused the records.

6. The sole question which arises for adjudication is "whether the motor cyclist can be held guilty of contributory negligence as the motor cycle was being driven by Mohd. Farrukh in violation of safety measures provided for drivers and pillion riders in Section 128 of the Motor Vehicles Act, 1988 (in short "the Act")."

7. A relevant extract from Section 128 of the Act is quoted for facility of reference:-

"128. Safety measures for drivers and pillion riders.-

(1) No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

(2) In addition to the safety measures mentioned in sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor cycles and pillion riders thereon."

8. No doubt, in view of the provisions of Section 128 of the Act, the driver of a two wheeled motor cycle shall not carry more than one person in addition to himself on the motor cycle. The question now arises is that merely on account of the motor cyclist carrying more than one person in addition to himself on pillion of a two wheeler can automatically raise an inference that he is guilty of contributory negligence. I am afraid if this fact alone is sufficient to hold that motor cyclist has contributed to causing of accident. Conversely, every case has to be examined in the light of facts and circumstances obtaining therein.

9. Now reverting to the facts of the case in hand, one of the occupants of the motor cycle in question, who sustained injuries, appeared in the witness box and

has categorically deposed that the driver of the offending vehicle brought the vehicle on the wrong side and struck against the motor cycle driven by Mohd. Farrukh. His testimony is duly corroborated by another eye witness to the occurrence. It has been proved on record that driver of the offending vehicle namely Ali Mohd. is facing trial for committing offence punishable under Sections 279, 337, 338, 304A of the Indian Penal Code as report under Section 173 of the Code of Criminal Procedure has been submitted in the court after completion of investigation of FIR No. 357 dated 28.10.2009 registered in Police Station, Hathin, District Palwal.

10. Driver of the offending vehicle did not appear in the witness box to counter the statement of the injured-victim and other eye witness to the occurrence. Keeping in view the facts and circumstances of the present case, I am of the considered opinion that mere fact that the motor cyclist was driving the motor cycle with two persons on its pillion itself is not sufficient to hold in favour of the appellant that the motor cyclist is guilty of contributory negligence and therefore, the amount of compensation assessed by the Tribunal to the extent of 50% is liable to be deducted being attributable to the negligence of the motor cyclist. The view taken by this Court in United India Insurance Company Limited's case (supra) seems to be the reasonable view and, therefore, I concur with the findings recorded in the said case. For the aforesaid reasons, contention of the appellant-insurance company that the deceased is guilty of contributory negligence is meritless and accordingly rejected:

FAO-6466 of 2012

Counsel for the appellant contends that the compensation awarded by the Tribunal is liable to be reduced as the learned Tribunal has wrongly deducted 1/10th of the income towards personal expenses of the deceased which has to be 1/4th in view of the judgment in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

Counsel for the respondents urges that deduction may be made in view of the judgment in Smt. Sarla Verma and others" case (supra) but the income for future prospects is to be increased to the extent of 50% as the deceased was less than 40 years of age, in view of judgment of the Hon"ble Supreme Court of India Rajesh and Others Vs. Rajbir Singh and Others, .

As per settled position of law, the Tribunal is obliged to award just and reasonable compensation keeping in view age of the deceased, number of dependents as well as income of the deceased. In the case at hand, learned Tribunal has assessed monthly income of the deceased at Rs. 4500/- and deducted 1/10th towards personal expenses and allowed increase in income to the extent of 30% while relying upon judgment of the Hon"ble Supreme Court of India in Santosh Devi v. National Insurance Company Limited and others, (2012-4)168 PLR 604, decided on 23.4.2012. Keeping in view judgment of the Hon"ble Supreme Court of India in Smt. Sarla Verma and others" case (supra),

deduction to the extent of 1/4th is admissible in the circumstances of the present case. However in view of age of the deceased, increase in income for future prospects is to be allowed to the extent of 50%. After deducting 1/4th towards personal expenses and allowing 50% increase in income, loss of dependency comes to Rs. 10,93,500/-. The award in regard to grant of compensation under conventional heads and medical expenses shall remain intact.

FAO-6467 of 2012

The Learned Tribunal has assessed monthly income of the deceased at Rs. 3900/- and deducted 1/10th towards personal expenses and allowed increase in income to the extent of 30% while relying upon judgment of the Hon''ble Supreme Court of India in Santosh Devi v. National Insurance Company Limited and others, (2012-4)168 PLR 604, decided on 23.4.2012. Keeping in view the judgment of the Hon''ble Supreme Court of India in Smt. Sarla Verma and others'' case (supra), deduction to the extent of 1/4th is admissible in the circumstances of the present case. However in view of age of the deceased, increase in income for future prospects is allowed to the extent of 50%. After deducting 1/4th towards personal expenses and 50% increase in income, loss of dependency comes to Rs. 8,95,000/-. The compensation awarded under conventional heads shall remain intact.

The amount of compensation shall be payable to the claimants with interest at the rate of 7.5% per annum from the date of filing of petitions till realization. If the insurer deposits the amount in the Tribunal within 45 days, interest at the rate of 6% shall be payable.

The appeals stand disposed of in the aforesaid terms.