
(2013) 07 P&H CK 0426
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 6010 of 2011 O and M

National Insurance Company Limited	Vs	APPELLANT
Lokesh and Others		RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0426

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Advocate : Vivek Singal, for the Appellant; Jitender Dhanda, Advocate for Respondents No. 1, 2, 5 and 6 in F.A.O. No. 6010 of 2011, for Respondents No. 1 to 3, 6 and 7 in F.A.O. No. 6011 of 2011 and for Respondents No. 1 and 2 in F.A.O. No. 6012 of 2011 and Mr. Devender Punia, Advocate for Respondents No. 3 and 4 in F.A.O. Nos. 6010 and 6012 of 2011 and for Respondents No. 4 and 5 in F.A.O. No. 6011 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Singh Malik, J.—The above mentioned three appeals have been brought by National Insurance Company Limited, the insurer challenging the findings on the aspects of negligence and amount of compensation. Lokesh and Rajender Lal, son and husband respectively of Smt. Pushpa Rani [deceased] filed claim petition No. 20 of 2010, the award passed in which has been challenged in FAO No. 6010 of 2011. They had arrayed the daughters of Smt. Pushpa Rani as proforma respondents. Smt. Amita, Preeti and Gaurav brought claim petition No. 21 of 2010 on the death of Madan Lal. The award passed in the same has been challenged in FAO No. 6011 of 2011. The last claim petition bearing No. 22 of 2010 had been brought by Jitender Lal Thakkar and Jogesh Lal Takkar on the death of their mother Smt. Sushila Devi. The award in this case has been challenged by way of FAO No. 6012 of 2011. Since all these three appeals are directed against the common award dated 23.5.2011 passed by learned Motor Accidents Claims Tribunal, Fatehabad (for short, "the Tribunal") the same are being disposed of by this common order. The facts necessary to decide these

appeals can be reproduced as under:

On 18.04.2009 at about 5.30 PM, a car bearing registration No. DL-3CM-8957 driven by Krishan Singh was carrying the deceased from Bhiwani to Ellenabad. There was darkness at the spot of accident and on account of the glare of the lights of the vehicles coming from the opposite direction, the tractor trolley bearing registration No. HR-22E-3708 that was parked in the middle of the road at the place of the accident, did not become visible to Krishan Singh from a distance. When he was able to see the tractor trolley, he tried to stop the car, but could not avoid the accident. The car had hit the tractor trolley and the occupants of the car suffered injuries. Madan Lal died at the spot while Pushpa Rani succumbed to her injuries on the way to the hospital. Sushila Devi died due to the injuries on 5.5.2009. It is claimed that the car was driven in a careful manner at moderate speed and the accident was due to wrong parking of the tractor trolley in the middle of the road without putting up indications sufficient to show its presence on the road.

In claim petition No. 20 of 2010, compensation is claimed on the death of Pushpa Rani in a sum of Rs. 20,00 lacs. It is claimed that Pushpa Rani was 56 years of age and was earning Rs. 25,423/- by working as Head Teacher in Government Primary School Dhangar District Fatehabad.

2. In claim petition No. 21 of 2010 Madan Lal is said to have died at the age of 52 years and he was drawing salary of Rs. 11,126/- while working as a clerk in the office of District Food and Supplies Controller, Sirsa.

3. In claim petition No. 22, Sushila Devi is claimed to have been of the age of 65 years and drawing pension of Rs. 8,500/- per month.

4. Respondents resisted the claim petitions. Respondents No. 1 and 2 have denied the involvement of the tractor trolley in the accident. The FIR lodged regarding the accident is stated to be falsely got recorded in collusion with the claimants. The insurer had denied the driver of the tractor to be holding a valid and effective driving licence in addition to the other pleas raised by respondents No. 1 and 2.

5. On the pleading of the parties, the parties went to trial on the following issues:-

1. Whether the accident in question took place due to rash and negligent driving of vehicle bearing registration No. HR-22E-3708 and in which Smt. Pushpa Rani and Madan Lal received serious and multiple injuries on various parts of their bodies and which proved fatal for them, if so, its effect? OPP

2. If issue No. 1 is proved in affirmative, whether the claimants alongwith proforma respondent are entitled to compensation, who much and from whom? OPP

3. Whether the driver of offending vehicle was not holding a valid and effective

driving licence at the time of accident if so, to what effect? OPR

4. Relief.

6. The parties led their respective evidence. Hearing learned counsel for the parties, learned Tribunal held under issue No. 1 that the accident occurred due to wrong parking of the tractor trolley in the middle of the road. Learned Tribunal allowed the claim petitions and awarded the compensation in the following amounts:

7. Learned counsel for the appellant has contended that it is a case of composite negligence. According to him, the tractor trolley was though, parked on the road, yet it was not in the middle of the road and as the accident took place at 7.30 PM on 18.4.2009, it could not be so dark at that time that the glare of the light of vehicle coming from the opposite side could blind the driver of the car and that he could not see the parked tractor trolley. He has further submitted that in case of Pushpa Rani she had been a Head Teacher in a Government Primary School of Haryana. According to him, she was getting a salary of Rs. 25,423/- per month. He has further submitted that learned Tribunal has adopted the multiplier of 9 taking the age of the deceased as 57 years. He has submitted that she would have remained in service only for a couple of years and thereafter, she would have retired and would have received half of the salary as pension. According to him, computation of compensation in this manner is incorrect. He has, however, admitted that learned Tribunal has reduced the compensation by the amount, the claimants would have received from the Haryana Government as financial assistance under the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2006. He has further submitted that in case of death of Madan Lal, his salary is taken at Rs. 11,126/- and the multiplier adopted is of 11. He has submitted that the benefit accruing to the claimants in this case has already been deducted by the Tribunal. He has further submitted that he does not dispute the award in claim petition No. 22 of 2010 on quantum of compensation.

8. Learned counsel for the respondents-claimants have countered the submissions of learned counsel for the appellant-insurer by submitting that the tractor trolley was parked on the middle of the road with no indication put up there to indicate its presence on the road to the other users of the road. According to him, as the accident took place at 7.30 PM and it was darkness at the spot, the light of the vehicles coming from the other side had the capability to blind the driver of the victim car. According to him, learned Tribunal is thoroughly justified in taking the view in this matter that the accident is an outcome of wrong parking of the tractor trolley in the middle of the road. He has further submitted that even though, Pushpa Rani would have retired within a period of two years, she was a teacher and she could add to her income by taking up tuition etc. According to him, when multiplier system is taken to compute the income of people who are not in jobs, where the incumbent does not retire, there is no reason why the award should not be passed by taking the

multiplier system in this case also.

9. Krishan Singh, the driver of the victim car has appeared as PW-5. Besides him, Amita [PW-2] who was also travelling in the said car, deposed about the manner in which the accident took place. They have stated that the tractor trolley was parked in the middle of the road without there being any reflector on the trolley or any fencing around it. Krishan Singh [PW-5] has stated that he tried his best to avoid the accident, but on account of the lights of the vehicle coming from the opposite side, he could not see the tractor trolley and when he was able to see it, it was too late.

10. When no evidence came on the point from the other side, there was no reason with the Tribunal to discard the testimony of Krishan Singh and Amita. Their consistent statements proved that the tractor trolley was parked in the middle of the road. At 7.30 PM on the date of the accident there was not enough light in which such a parked vehicle could be seen. When there was light of the vehicles coming from the opposite side, the same could further reduce the visibility of the driver of the victim car. These were the good reasons with learned Tribunal to repel the submissions of learned counsel for the respondents that it was a case of contributory negligence.

11. It is true that Pushpa Rani would have retired within a period of two years from the accident. However, it could not be argued that she could not earn thereafter by giving tuitions and make up the fall in the amount received by her after retirement. The compensation has, therefore, rightly been assessed by adopting the multiplier system. The same has been reduced by the amounts received by the dependents of Pushpa Rani and Madan Lal and no exception can be taken thereto. No submission has been made, however, with regard to the compensation assessed in the third case. In view of my aforesaid discussion, I find no reason to interfere with the impugned award passed by learned Tribunal. Finding no merit in any of the contentions raised on behalf of the insurer in the three appeals, I dismiss the same.