(2016) 07 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 6409 of 2012(O&M)

Nishas APPELLANT

Vs

Sita Devi RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, Section 166

Citation : (2017) 1 PLR 408

Hon'ble Judges : Mrs. Rekha Mittal, J.

Bench : Single Bench

Advocate : Mr. Zorawar Singh for Mr. Manoj Tanwar, Advocates, for the Respondents No. 2 to 4 in FAO No. 1352 of 2013(O&M); None, for the Appellants in FAO No. 1352 of 2013(O&M); Mr. D.K. Prajapati, Advocate, for the Respondent No. 5 in FAO No. 1352 of 2013(O&M); Mr.

Final Decision : Allowed

Judgement

Mrs. Rekha Mittal, J. - This order shall dispose of FAO Nos.6409 of 2012 and 1352 of 2013 as these have emerged out of the same award dated 31.08.2012 passed by the Motor Accident Claims Tribunal, Rewari (for brevity ''the Tribunal''), whereby compensation with regard to death of Prithvi Singh in a motor vehicular accident on the intervening night of 7/8.08.2010 has been awarded in favour of Smt. Sita Devi and others.

FAO No.1352 of 2013

The claimants have filed the appeal seeking enhancement of compensation. The Tribunal assessed income of the deceased at Rs.6,000/- per month, deducted ?rd towards his personal expenses, adopted a multiplier of 15 and computed loss of dependency to Rs.7,20,000/-. In addition, they were awarded an amount of Rs.5000/- each for loss of estate, expenses of funeral and loss of consortium making total compensation of Rs.7,35,000/- payable with interest at the rate of 9% per annum from the date of filing of the petition till realization.

2. The appellants have not been allowed benefit of increase in income for future prospects in the light of judgment of Hon''ble the Supreme Court Rajesh and others v. Rajbir Singh and others, 2013 (3) RCR (Civil) 170. The mere fact that the question with regard to increase in income for future prospects is pending before a Larger bench of Hon''ble the Apex Court, is not sufficient to deny the said benefit till the time the judgment in Rajesh and others case (supra) is varied or set aside. After allowing benefit of increase in income to the extent of 50% as the deceased was less than 40 years of age, compensation towards loss of dependency comes to Rs.10,80,000/- [Rs.7,20,000/- + Rs.3,60,000/- (future prospects)].

3. The appellants shall be entitled to an amount of Rs.25,000/- each for loss of estate and expenses on funeral. The widow of the deceased shall be entitled to an amount of Rs.1,00,000/- towards consortium. The minor claimants Kushalpal and Kuldeep sons of the deceased are awarded an amount of Rs.1,50,000/- in equal shares for loss of love and affection of their father.

4. In view of the above, total compensation payable to the appellants comes to Rs.13,80,000/- [Rs.10,80,000/- (dependency) + Rs.1,50,000/- (loss of love and affection to children) + Rs.1,00,000/- (loss of consortium to widow) + Rs.25,000/- (loss of estate) + Rs.25,000/- (expenses on funeral)]. The enhanced compensation comes to Rs.6,45,000/- (Rs.13,80,000/- - Rs.7,35,000/-) payable along with interest in terms of the award of the Tribunal.

5. The compensation awarded in favour of the minor claimants towards loss of love and affection shall be payable to them as discussed hereinbefore. The same shall be deposited in a Fixed Deposit Receipt till they attain the age of 21 years. The interest accruing on the Fixed Deposit Receipt shall be payable to mother of the minors to meet expenses on their living and education. The remaining amount of enhanced compensation shall be payable to widow of the deceased and the same shall be deposited in a Fixed Deposit Receipt for a period of two years. The appellants shall not be entitled to raise any loan against the amount deposited by way of fixed deposits.

Disposed of accordingly.

FAO No.6409 of 2012

6. The appellants-Nisha and others have filed the appeal to express their grievance against findings on issue No.3 whereby it has been held that driver of the offending vehicle HR38-D-6297 was not holding a valid driving licence and thus, the Insurance Company has the right to recover the amount of compensation from the driver and owner of the offending vehicle after discharging liability qua the claimants.

7. It has been argued that Anil Kumar, registered owner of the vehicle, passed away and his legal representatives Nisha and others were brought on record. Mahipal, father of Anil Kumar, appeared in the witness box but the learned

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nishas-appellant-hash-sita-devi-...

Tribunal failed to appreciate his statement in correct perspective. In the light of facts elicited in the statement of Mahipal (RW- 1), the Insurance Company can neither be exonerated of its liability to pay compensation nor can assert its claim to recover compensation after discharging liability qua the claimants by invoking the provisions of Section 149 of the Motor Vehicles Act, 1988 (for brevity ''the Act'').

8. Counsel for the contesting respondent-New India Assurance Co. Ltd. (hereinafter referred to as the ''Company'') has supported the findings on issue No.3 with the submissions that as per the reports Ex.R5 and Ex.R7 of the Licensing Authority, Gwalior, the driving licence held by Mohan Lal ? respondent No.1 was not issued by the said authority and, therefore, the same was fake. It is further argued that as per the settled position in law, if the original licence is found to be fake, its renewal would not cure inherent fatality.

9. I have considered rival submissions made by counsel for the parties and gone through the records of the Tribunal.

10. There is no denial that Anil Kumar, the registered owner of the vehicle, passed away and therefore, could not be examined. Mahipal, father of Anil Kumar, examined himself and tendered into evidence his duly sworn affidavit Ex.RW1/A. He has deposed that he along with his son Anil Kumar had been carrying on their transport business from Shop No.49, Anaj Mandi, Rewari. Mohan Lal son of Krishan, resident of Rajeev Nagar, Rewari was employed as a driver on vehicle No. HR38-D- 6297 on 10.05.2010 by Sh. Anil Kumar in his presence and he (Anil Kumar) tested driving skill of Mohan Lal and saw his driving licence Ex.RW1/2 which had the signatures and seal of the Licensing Authority at Rewari. It has further been deposed that Anil Kumar never had any knowledge of the licence to be fake or wrong and Anil Kumar had not violated any of the terms and conditions of the contract. The witness was cross-examined by counsel for the Company. Nothing material and tangible has been elicited during his cross-examination to impeach his credibility or to prove that the facts stated in the affidavit are not worthy of reliance. Counsel for the Company has not pointed out any materials on record that Anil Kumar ever had intimation that the driving licence held by Mohan Lal, driver of the offending vehicle, was fake.

11. Hon''ble the Supreme Court in United India Insurance Co. Ltd. v. Lehru and others, 2003(2) R.C.R. (Civil) 278, on a detailed discussion with regard to implications of Section 149(2) of the Motor Vehicles Act, 1988 has held that Section 149(2)(a)(ii) absolves the Insurance Company where there is a breach by the insured. In para 20 of the judgment, the Court has held as to what owner of the vehicle is required to check while hiring a driver. A relevant extract from para 20 is reproduced herein below for ready reference:-

"20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nishas-appellant-hash-sita-devi-…

licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that Insurance Companies expect owners to make enquiries with RTO''s, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the Insurance Company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia ''s Sohan Lal Passi ''s and Kamla ''s case. We are in full agreement with the views expressed therein and see no reason to take a different view."

12. The same view was reiterated in judgment of Hon''ble the Supreme Court Pepsu Road Transport Corporation v. National Insurance Co., (2013) 10 SCC 217.

13. When the facts brought in the statement of Mahipal are examined in the light of observations recorded in para 20 of the judgment reproduced herein above, I find merit in contentions of the appellants that neither the Insurance Company can be heard to say that the insured has committed breach of Section 149(2)(a)(ii) or can it recover the amount of compensation from the owner and driver of the offending vehicle by taking recourse to the provisions of Section 149 of the Act. The learned Tribunal did not notice the judgment in Lehru and others case (supra) while holding in favour of the Company that it can recover the amount of compensation after discharging liability qua the claimants.

14. In view of the above, the findings recorded by the Tribunal on issue No.3 cannot be allowed to sustain and accordingly set aside.

15. In view of what has been discussed herein above, the appeal is allowed. The award passed by the learned Tribunal so far as allowing the Company to recover the amount of compensation from the owner and driver of the vehicle is ordered to be set aside. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nishas-appellant-hash-sita-devi-…