(2012) 10 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 351 and 525 of 1991 (O and M)

Shanti Dev and Another — APPELLANT

Vs

Malu Ram and Others — RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2013) 169 PLR 178

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Kamal Sharma in FAO No. 351 of 1991 and Mr. L.M. Suri, with Mr. Neeraj Khanna in FAO No. 525 of 1991, for the Appellant; Kamal Sharma for respondents 1 and 2 in FAO No. 525 of 1991, Mr. Deepak Suri for respondent No. 6 in FAO No. 525 of 1991 and Mr. Inderjit Sharma for National Insurance Company in FAO No. 351 of 1991, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—Both the appeals in FAO Nos. 351 and 525 of 1991 are against the determination of compensation for death of a male, aged 17 years. The appeal by the claimant is for enhancement in FAO No. 351 of 1991, while the Insurance Company is in appeal denying liability in FAO No. 525 of 1991. The claimants were the parents, who claimed a compensation of Rs. 2 lakhs. Their contention was that their son was working as a Cleaner/Helper in the respondent''s truck and the accident had taken place in a collision between two trucks. He was sitting by the driver in the insured''s truck. In the cross-examination of the owner, it was elicited that the deceased was a Munshi and he used to travel in the trucks to purchase building materials for the owner. This was the basis for the Insurance Company to plead that he was a gratuitous passenger and not a Cleaner or a Helper to whom the insurance was compulsory in an Act policy. The liability cast on the Insurance Company was, therefore, not justified. Both counsel also argued on the quantum of compensation, the claimants contending that the compensation is inadequate and the Insurance Company pleading that the compensation assessed was on the higher side.

2. The claimants have stated in the petition that the deceased was a Cleaner and the accident took place when he was traveling in the truck in the course of his employment. The Insurance Company has denied the petitioner''s contention and has stated that the deceased was a gratuitous passenger. The owner has given a statement midway that he was an employee and not a gratuitous passenger, but he was a Munshi. The learned senior counsel appearing on behalf of the Insurance Company states that the best evidence that is possible could be only that of the owner and if his evidence was that he was a Munshi, that ought to be preferred. I cannot accept this contention, for, statement of the owner who was an adversary to the claimant cannot constitute an admission. The correctness of the statement of the owner itself is open to doubt, for, the deceased was a youth, who was not even a major. It is not uncommon that the evidence of raw youth in the age of 17/18 etc are employed as cheap labourers in trucks and if the claimants would contend that their son was a Cleaner, I would believe that they were speaking truth and I will reject the contention that he was a Munshi. If he were a Munshi, Helper in a truck, he would rather be termed as a Cleaner than an employee whose presence in the truck was unauthorized. I will, therefore, find the insurer liable for the death occurring to the deceased in his capacity which I determine as a Cleaner/Helper.

3. As regards the quantum of compensation, the Tribunal has taken the income at Rs. 750/- per month and provided for a monthly contribution of Rs. 350/- and applied a multiplier of 12. In a recent judgment of the Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, the Supreme Court has even provided for an escalation in the income considering the fact that a person was young and whose income was shown to be Rs. 1,500/- the Court adopted a 30% increase as prospect of what the future would have given to him over a period of time considering the case was taken up in the year 2012. The contribution of Rs. 350/- per month to the parents over a period of time ought to be taken as grossly minimal and I would enhance it to Rs. 500/- per month on the basis of evidence that the he was one of 4 sons and that the father expected the son to support him at least for a period of 10 years till his marriage. There was also his mother who was younger and would have expected her son to support her. I would, therefore, take the monthly contribution at Rs. 500/- to the family and adopt a multiplier of 16 and take the loss of dependency at Rs. 96,000/-. I will provide for an additional sum of Rs. 4,000/- towards the conventional heads of loss to estate and funeral expenses and take the compensation payable as a lakh of rupees. The addition to what was already awarded by the Tribunal will attract interest at 7.5% from the date of petition till date of payment. The amount shall be distributed between the parents equally.

4. The policy of insurance was under the Motor Vehicles Act of 1939 where the liability for the Insurance Company u/s 95 was Rs. 50,000/-. The amount in excess of Rs. 50,000/- will be borne only by the insured. The appeal by the owner in FAO No. 351 of 1991 stands allowed to the above extent and the appeal by the Insurance Company in FAO No. 525 of 1991 shall stand dismissed.

