(1994) 06 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 743 of 1988

United India Insurance Company Ltd. and Another — APPELLANT

Vs

Harbir Kaur and Others — RESPONDENT

Date of Decision : 03-06-1994

Acts Referred:
Motor Vehicles Act, 1939 — Section 103A, 110A

Citation : (1995) ACJ 390 : (1994) 108 PLR 367

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : R.S. Bindra and Anita Garg, for the Appellant; Ajai Tiwari, for the Respondent 1 to 3, for the Respondent

Judgement

Amarjeet Chaudhary, J.—This judgment will dispose of FAO No 743 of 1988 (United India Insurance Company Ltd. and Anr. vs. Harbir Kaur and Ors.) AND FAO No. 873 of 1988 (Harbir Kaur and Ors. vs. Inder Singh and Ors.).

2. On January 27,1987, Gurbachan Singh Bedi while driving Scooter on G.T. Road was hit by track No. RNC-2886 (previous No. MNP-4197) which was being driven by Inder Singh, respondent No. 1 and owned by Karam Singh, respondent No. 4 and as a result of the accident, he died at the spot On the finding that the accident took place due to the rash and negligent driving of respondent No. 1, Inder Singh, the. Motor Accident Claims Tribunal awarded a sum of Rs.7,20,000/- as compensation to the claimants Harbir Kaur and her two minor children. The liability to pay compensation was fastened on the Insurance Company and Karam Singh, owner of the offending vehicle, respondent Nos. 3 and 4 respectively. The liability of Insurance Company was held to be unlimited as per policy Ex. RX (also Ex. RW2/1).

3. The Insurance Company has sought to challenge its liability on the ground that the truck involved in the accident had been transferred by its owner Karam Singh to Ranjit Singh and neither Karam Singh nor Ranjit Singh had informed the Insurance Company about the factum of sale of the truck and as such the

Insurance Company was not liable to pay compensation for the reason that when the accident took place, ownership of the truck was changed and Ranjit Singh had become owner of the truck and liability to pay compensation should be that of Ranjit Singh. The other plea is that the Tribunal has assessed the entire income of the deceased as dependency of the claimants and it has further fell in error in applying the multiplier of 20.

4. On the other hand, the claimants have filed FAO No.873 of 1988 for enhancement of compensation on the ground that the income of the deceased must have increased in due course of time.

5. Learned Counsel for the appellants has argued that it was only after the accident that the Insurance Policy was transferred in the name of Ranjit Singh.

6. The matter herein is clearly covered by the provisions of Section 103-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the ''Act'') and in terms thereof, there-is no escape from the conclusion that the plea of the Counsel for the appellants is wholly devoid of merit.

7. It is admitted case that the accident had taken place on 27.1.1987 and Karam Singh owner of the truck had entered into an agreement with Ranjit Singh on 28.1.1986 and the payment was to be made in parts and full payment was to be made by 4.2.1987 which was actually made on the said date. The Insurance Policy was transferred in favour of Ranjit Singh on 5.2.1987. As mentioned earlier, the accident took place on 27.1.1987 and the truck was being driven by Inder Singh, who was none-else but a driver employed by Karam Singh. Section 103-A of the Act lays down that such transfer must relate back to the date of transfer of the vehicle concerned. The Insurance Company cannot be absolved of its liability merely on the plea that the Policy was transferred to Ranjit Singh, respondent, No. 2 after the accident as upon the transfer of the Policy the provisions of Section 103-A of the Act would relate it back to 27.1.1987, i.e. the date on which the accident took place.

8. The next plea of the learned counsel for the appellant is that the Tribunal should not have taken into account the entire income of the deceased as the dependency of the claimants. I find there is substance in the argument of the learned counsel for the appellant in this regard. Dependency of the claimants has been assessed on the basis of the income of the deceased i.e. Rs.3,000/- which is based on the Income Tax return filed by the deceased. In determining the dependency of the claimants on the deceased one third amount from the total income of the deceased is always deducted as personal expenses of the deceased and remaining amount is determined to be the dependency of the'' claimants on him. However, in the case in hand, the Tribunal had not deducted any amount as personal expenses of the deceased. As such the Tribunal had erred in assessing the entire income of the deceased as dependency of the claimants. The Tribunal ought to have deducted l/3rd out of the total income of the deceased and the remaining 2/3rd should have been assessed as claimants'' dependency upon the

deceased. After deducting l/3rd from the total income of the deceased, the dependency of the claimants on the deceased would come to Rs.2,000/- per month and the annual dependency would be Rs.24,000/- (Rs.2000x12).

9. The other aspect of the matter is that the deceased was 33 years of age at the time of his death. I am of the considered view that multiplier of 20 applied by the Tribunal is on higher side. While applying the multiplier, the Tribunal should have followed the ratio of the decision of this Court rendered in Lachman Singh and Ors. v. Gurmit Kaur (1979) 81 PLR 1, in which the deceased was 23 years of age and multiplier of 16 was applied while granting compensation to the claimants. In the said judgment, certain principles were laid down by their Lordships for assessing the compensation and it was held therein that for the purpose of calculating the just compensation, annual dependency of the dependents should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose, annual earning of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependents will be the determining factor. This basic figure will then be multiplied by a suitable multiplier. The suitable multiplier shall be determined by taking into consideration the number of years of the dependency of the various dependents, the number of years by which the life of the deceased was cut short and the various imponderable factors such like early natural death of the deceased, his becoming incapable of supporting the dependents due to illness or any other natural handicap or calamity, the prospects of the remarriage of the widow, the coming up of the age of the dependents and developing their independent source of income as well as the pecuniary benefits which might accrue to the dependents on account of the death of the person concerned. Such benefits, however, should not include the amount of Insurance Policy of the deceased to which the dependents may become entitled on account of its maturity as a result of the death.

10. Keeping in view the ratio of the decision in Lachman Singh''s case (supra), I am of the considered view that the multiplier of 16 will be a suitable multiplier. By applying the said multiplier of 16, the total amount to which the claimants would be entitled to, comes to Rs3,84,000/- which will be shared by them in the following manner :-

1. Harbir Kaur (Widow) Rs.2,00,000/-. 2. Miss Mitika (Minor) Rs. 92,000/-. 3. Miss Sneha (Minor) Rs. 92,000/- --------------- Rs.3,84,000/-. --------------- The amount falling to the share of the minors shall be deposited in a nationalised bank in FDRs till they attain majority. The amount falling to the share of the widow shall also be deposited in FDR. The Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. The claimants will also be entitled to 12% interest on the amount of compensation from the date of filing of the claim petition till its realisation.

11. The appeal of the Insurance Company is partly allowed while that of the claimants is dismissed. The award of the Tribunal is modified to the extent

indicated above. No order as to costs.

