**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. FAO No.4425 of 2011

Kamlesh Devi and others

… Appellants

Versus

Utam Singh @ Kala and others

… Respondents

2. FAO No.1667 of 2013 (O&M)

Utam Singh @ Kala and another

… Appellants

Versus

Kamlesh Devi and others

… Respondents

Date of decision: 23rd January, 2015

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Khatri, Advocate
for the claimants/appellants in FAO No.4425 of 2011
respondents No.1 to 5 in FAO No.1667 of 2013;

Mr. Gaurav Bakshi, Advocate for
Mr. Saurabh Dalal, Advocate
for the driver & owner/
respondents No.1 & 2 in FAO No.4425 of 2011;
appellants in FAO No.1667 of 2013.

Mr. Rajneesh Malhotra, Advocate
for the insurer/respondent No.3 in FAO No.4425 of 2011;
respondent No.6 in FAO No.1667 of 2013.

FATEH DEEP SINGH, J.

As both these appeals by different sets of parties are against the common Award dated 13.01.2011 passed by learned Motor Accident Claims Tribunal, Jhajjar and due to consanguinity of facts and law are being disposed off together for the sake of brevity.

It is worthwhile to refer here that the appeal by the claimants Kamlesh Devi and others where the claim is for enhancement of compensation whereas appellants Utam Singh @ Kala and another are against the Award itself.

After hearing Mr. Vivek Khatri, Advocate for the claimants; Mr. Gaurav Bakshi, Advocate on behalf of Mr. Saurabh Dalal, Advocate for the driver & owner and Mr. Rajneesh Malhotra, Advocate for the insurer and on perusal of the records.

The undisputed facts that are serialized are that on 06.10.2009 around 6.20 a.m. Bharat Singh deceased aged around 48 years working as a Conductor in Delhi Transport Corporation was mowed down by the offending vehicle a three-wheeler bearing registration No.HR-69-9368 being driven in a rash and negligent manner by its driver Utam Singh @ Kala and which vehicle was owned by respondent Krishan Dutt and insured with M/s Cholamandalam M.S. General Insurance Company Ltd.

What permeates from the contentions of the two sides, firstly is over the quantum of compensation. The salary of the deceased is well established by way of salary certificate Ex.P4 which shows his salary to be ₹17,885 per month and which fact is elaborated by Kamlesh Devi widow as PW1 by way of her affidavit Ex.P1, PW-3 Ram Phal Kataria, Senior Clerk from the office of Delhi Transport Corporation and further as to the age of the deceased being 48 years is established from the post-mortem report Ex.P5 and the death certificate Ex.P6. The inter-se relationship of the claimants and the deceased is not put to question nor is subject matter of challenge.

Learned counsel for the appellants/driver and owner could not convince this Court how the findings of learned Tribunal on issue No.1 that the accident was due to rash and negligent driving of the offending vehicle by its driver was wrong and rather the eye-witness account brought about by PW-2 Om Parkash corroborates this finding and more so, since driver as well as the owner are contesting the claim petition but none has bothered to step into the witness box to refute this finding of the accident and rather taking an adverse presumption in terms of Section 114 of the Evidence Act and the overall evidence which has remained unrebutted, findings on issue No.1 needs to be upheld. The learned Tribunal has consequently decided issue No.2 in favour of the claimants.

The next bone of contention in the submissions is over the violation of terms of the insurance contract as the learned Tribunal has given recovery rights to the insurer. There is a specific stand of the insurer that the driver at the time of accident was not holding legal, valid and effective driving license though the driver has placed on record copy of the driving license Ex.R2 and undisputedly as has been accepted even on behalf of the driver that the same is in respect of Scooter, Car, Jeep and LTV and is valid upto 07.02.2011 and was issued on 27.12.1999 and since it has been rightly adduced by the driver that this driving license is never shown to be fake or did not entitle the driver to drive such a vehicle and therefore, findings qua issue No.4 onus of which lay upon the insurer needs to be upheld.

The sole residual submission revolves around the validity of the route permit. Since the offending vehicle which is a Piaggio three-wheeler falls under the category of LTV, the testimony of RW1 Jitender Talwar, Clerk of the office of RTA, Sonepat shows that the route permit Ex.R1 was issued in favour of respondent No.2 Krishan Dutt to ply the offending vehicle within the municipal limits of Sonepat and was valid from 17.06.2008 to 16.06.2013. The accident admittedly took place in the area of village Badli, which falls in district Jhajjar and thus, the vehicle undisputedly was being plied outside the area of its operation as per the route permit and which argument so advanced on behalf of the insurer could not be controverted by the driver and owner and therefore, clearly contravenes the terms and conditions of the insurance contract. Therefore, findings of the learned Tribunal qua issue No.5 holding that respondent No.2/owner contravened the terms and conditions of the insurance policy and has rightly decided it in favour of the insurer/respondent No.3, needs to be upheld.

Keeping in view earnings of the deceased proved documentarily and after deducting the income tax at source, it can be rationally considered that the deceased after expenses on his own-self must be contributing ₹15,500 per month towards the family consisting of his widow, two sons and a daughter as well as aged mother, and which is a reasonable amount keeping in view the rising trend of prices in a metropolitan city and therefore, annual dependency comes to ₹1,86,000. Having regard to the age of the deceased in the light of **'Sarla Verma & others v. Delhi Transport Corporation & another'** reported in **2009(6) SCC 121** multiplier of 13 needs to be applied and therefore, compensation comes to ₹24,18,000. It has been rightly argued on behalf of the claimants that not much amount has been awarded under the conventional heads and though not much evidence is available however, by some amount of guesswork and hypothetical assessment a sum of ₹1.50 lacs is awarded for the loss of consortium, loss of love and affection as well as funeral expenses which has not been considered by the learned Tribunal in the right earnest. Thus, the Award in question is certainly on the lower side and cannot be termed to be just and equitable and therefore, needs to be modified. Therefore, total compensation comes to the tune of ₹25,68,000 (rupees twenty five lacs sixty eight thousand only).

Besides this, the claimants are also entitled to interest @7.5% p.a. on the enhanced amount from the date of filing of the appeal till realization. Interim compensation paid, if any, shall be adjusted. Keeping in view the welfare nature of the Statute, the claimants shall be entitled to compensation so awarded from the insurer, driver and owner jointly and severally and which amount the insurer shall be entitled to recover jointly and severally from the owner and the driver. If any of the minor claimants has attained the age of majority, his/her share shall not be resorted to by way of FDR. Rest of the stipulations laid down by the Tribunal need not be disturbed.

No other argument has been raised.

Thus, in the light of foregoing discussions and findings arrived at in FAO No.4425 of 2011 the appeal filed by the claimants is allowed, however, finding no fault in the impugned Award FAO No.1667 of 2013 qua the driver/owner their appeal stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 23, 2015
rps