IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.8168 of 2014 (O&M)

Neelam Lata and another

… Appellants

Versus

Puran Singh and others

… Respondents

2. FAO No.8944 of 2014 (O&M)

IndusInd Bank Ltd.

… Appellant

Versus

Neelam Lata and others

… Respondents

Date of decision: 27th February, 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. Paul S. Saini, Advocate
for the claimants/
Appellants in FAO No.8168 of 2014;
Respondents No.1 & 4 in FAO No.8944 of 2014.

Mr. A.S. Virk, Advocate
for the insurer/
Respondent No.3 in FAO No.8168 of 2014;
Appellant in FAO No.8944 of 2014.

Mr. Tarun Aggarwal, Advocate
for the owner/
Respondent No.2 in FAO No.8168 of 2014;
Respondent No.3 in FAO No.8944 of 2014.

None for the driver/
Respondent No.1 in FAO No.8168 of 2014;
Respondent No.2 in FAO No.8944 of 2014.

FATEH DEEP SINGH, J.

Both these appeals, FAO No.8168 of 2014 by the claimants Neelam Lata and another and FAO No.8944 of 2014 by the insurer IndusInd Bank, are aimed by way of challenge to the Award dated 16.07.2014 of the learned Motor Accident Claims Tribunal, Panchkula and therefore, being cojoint and interconnected matters, deserve to be disposed off together.

After hearing Mr. Paul S. Saini, Advocate representing the claimants, Mr. A.S. Virk, Advocate for the insurer and Mr. Tarun Aggarwal, Advocate on behalf of the owner and perusing the records.

From the arguments of the contesting sides, the factum of accident having taken place on 19.12.2012 while deceased Miss Onam Gupta was going on Activa scooter bearing registration No.HR-03P-2099 and in the area of Baltana was hit by a tractor-trolley bearing No.PB-65R-2573 being driven rashly and negligently by its driver Puran Singh is an invariably admitted and duly proven fact.

None of the counsels have put to question the age of the deceased which is proven as 20 years and the fact that she was a student of Chartered Accountancy (Finals). The contentious issues that emerge are if the grant of compensation by the Tribunal was insufficient and inadequate, and secondly if the vehicle as per the averments of the insurer was being driven in violation of the terms and conditions of the insurance contract?

Though fault of the driver of the offending tractor-trolley is a forgone conclusion, never agitated at any juncture, the learned

Tribunal has rightly concluded that the claim of claimants that the deceased was getting stipend of ₹25,000 per month could not be documentarily established and having regard to the circumstances proved by way of the copies of cheques, the Tribunal has rightly concluded that the notional income/earnings of the deceased in all eventuality was ₹11,500 per month and therefore, annual income comes to ₹1,38,000. It is the stand of mother of the deceased that she was totally dependent upon the earnings of her daughter, who was a spinster (unmarried) and the learned Tribunal has correctly deducted 50% of these earnings and therefore, considering the dependency to be ₹69,000 per annum has applied multiplier of 18 and concluded compensation to the tune of ₹12,42,000 and has added 50% by way of future prospects coming to the figure of total compensation as ₹18,88,000.

It has been rightly argued on behalf of the claimants that there is no significant amount having been granted under the conventional heads, which could not be controverted on behalf of the insurer or owner and award of ₹25,000 for the same was certainly on the lower side. Having regard to the welfare nature of the Statute and the fact that the mother has lost her daughter, a source of love and affection, and she must have undergone immense pain, agony and sense of wrong, though not much evidence is led to this effect, however, by some amount of guesswork and hypothetical assessment an amount of ₹1,50,000 needs to be awarded under these conventional heads; and therefore, total compensation comes to

₹20,38,000 (rupees twenty lacs thirty eight thousand). 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. Since Ramesh Chand Gupta appellant No.2/claimant is proven to be the father thus a legal representative certainly is entitled to compensation and thus his claim stands allowed and both the parents shall be entitled to equal shares in the compensation amount. Rest of the stipulations laid down by the Tribunal need not be disturbed.

Learned Tribunal considering the documentary evidence established by way of covenants of the borrower for the advance of loan on the offending vehicle, which is Swaraj 855 tractor, has held the insurer Bank to be jointly and severally responsible for paying this compensation amount. However a close look on the certificate of registration shows that the vehicle has been registered as a private transport whereas the documents of the loan agreement Ex.RW3/A show that the offending vehicle as per the 1st Schedule of this agreement has been hypothecated with the Bank as a commercial vehicle for commercial use and rather what is highlighted that the owner at the time of its registration to take undue tax benefit has made a false declaration getting it registered as a private vehicle. Even otherwise, under the loan agreement the loan has been availed off by M/s Rajesh Kumar Sole Proprietor firm, are matters which have their bearing on the case of the owner. More so, as has been brought to the light on behalf of the insurer Bank which could not be controverted on behalf of the claimants that there is a provision of comprehensive insurance for the vehicle under question covering all risks and hazards.

Section 2 Sub-Section 30 of the Motor Vehicles Act, 1988 (in short, 'the Act') lays down the definition of 'owner' to be in relation to the motor vehicle which is the subject of a hire purchase agreement etc. the person in possession of the vehicle under that agreement, leaves no scope to doubt that by the rigor of law the owner of the offending tractor-trolley cannot get out of his obligation. The conclusions drawn by the learned Tribunal by adverting to Clause 13.3 of the loan agreement Ex.R3/A has given constricted meaning that *"the borrower is aware that the insurance deposit is collected as a part of the EMI and kept in as an interest free deposit. The Lender may at its sole discretion as a facilitator get the insurance done or renew the existing insurance cover on behalf of the Borrower, by remitting to the approved insurance company the premiums if collected through the Borrower's post dated cheque/pay orders/any other payment instructions……."* and thus, by this misinterpretation and misconstruing has also held the appellant Bank liable to pay the compensation jointly and severally with other respondents and there is not an iota of evidence that it was the Bank that was at fault when there is a specific unrebutted evidence that the vehicle was being used in contravention of the insurance policy. By virtue of Section 149 Sub-Section 2 Clause (C) of the Act for the purpose of being used as commercial vehicle which is not allowed under the insurance policy (which is not proved to be there at the time of accident) when it is a transport vehicle and in that eventuality absolves the insurer of the ultimate liability however, it would be invested with recovery rights from the owner and driver jointly and severally and in view of this position of law as has been cited at the bar by learned counsel for the appellant Bank through **'HDFC Bank Ltd. v. Kumari Reshma and Ors.' (Civil Appeals No.10608-09 of 2014 decided on 01.12.2014); 'Godavari Finance Company v. Degala Satyanarayanamma and others' (2008) 5 SCC 107,** the appellant Bank cannot be fastened with any liability being a mere facilitator of loan and hypothecator of the vehicle. Though the insurer, if any, at the time of accident is jointly liable along with the owner and driver but reserving recovery rights in this eventuality, and since insurance cover of the offending vehicle is not established so the driver and owner shall be jointly and severally liable to pay the compensation amount.

Thus, from it all ensues that the Award qua appellant Bank needs to be set aside and their appeal FAO No.8944 of 2014 is allowed in those terms, whereas the appeal FAO No.8168 of 2014 of the claimants is also allowed modifying the award to that extent.

(FATEH DEEP SINGH)
JUDGE

February 27, 2015
rps