IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 258 of 2004 (O&M)
Date of decision: January 7, 2016

Harpreet Kaur and others ...Appellants

Versus

Anand Motor Transport Co. and another ...Respondents

(2) FAO No. 517 of 2004 (O&M)

Parvinder Kaur and another ...Appellants

Versus

Anand Motor Transport Co. and another ...Respondents

(3) FAO No. 518 of 2004 (O&M)

Amarjit Kaur ...Appellant

Versus

Anand Motor Transport Co. and another ...Respondents

(4) FAO No. 681 of 2004 (O&M)

New India Assurance Company Ltd. ...Appellant

Versus

Harpreet Kaur and others ...Respondents

(5) FAO No. 682 of 2004 (O&M)

New India Assurance Company Ltd. ...Appellant

Versus

Parvinder Kaur and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. JC Batra, Advocate,
for the appellants in FAO Nos. 258, 517 and 518 of 2004
and for respondents No.1 to 5 in FAO No. 681 and for
respondents No. 1 and 2 in FAO 682 of 2004.

Mr. Suman Jain, Advocate,
for the appellants in FAO No. 681 and 682 of 2004 and
for respondent No. 2 in FAO 258, 517 and 518 of 2004.

K. KANNAN, J. (Oral)

1. All the five appeals are connected and they arise out of the accident involving the death of three persons, one driver, another the owner and yet another a relative. The vehicle had a package policy that could cover the risk of the passengers and there was also premium paid for a paid driver. The driver that died was is own relative and not a paid driver. The Tribunal determined the compensation amount and the insurance company is aggrieved against the awards passed in favour of the representatives of the driver and the owner. The appeals by the insurer against the claim of the representatives of the driver and the owner respectively are FAO No. 681 and 682 of 2004. The representatives of the driver and the owner are themselves aggrieved about the inadequacy of the compensation and they are in appeal in FAO No. 258 and 517 of 2004 respectively. Yet another appeal is at the instance of the representative of the passenger in FAO No. 518 of 2004.

2. As regards the liability of an insurer for the death of the insured/owner of the vehicle, even under a package policy, it could be restricted only to a personal accident cover, for, the policy of the insurance itself must be taken as merely indemnifying the loss of the insured. If the

insured himself has died, the limit of liability for the insured could extend only for a specific cover of accident that it take against the insurer. There is no liability possible for an insurer for the death of the owner of the vehicle, if there was no personal accident cover. The award passed for the death of the owner against the insurance company cannot be legally supported. The liability, however, could still be what is provided under the minimum of ₹50,000/- under Section 140 of the Motor Vehicle Act in terms of the judgment in Eshwarappa @ Maheshwarappa Versus C.S. Gurushanthappa and another 2010 (8) Scale 263. The appeal by the insurance company in FAO No. 682 is allowed but the liability is restricted to ₹50,000/-. The appeal by the owner for enhancement in FAO No. 517 of 2004 is dismissed, in the light of the reasoning adopted above.

3. As regards the claim by the driver, the limit of liability could arise in situation where the driver is a workman to whom the benefit under the Workman Compensation Act is available and for which the insurance ought to be provided compulsorily in terms of Section 47 of the Motor Vehicle Act. Admittedly, the person who died was not a paid driver or workman but the brother-in-law of the owner of the vehicle. The Supreme Court had an occasion to consider the case of death of a husband while driving tractor belonging to the wife in Gottumukkala Appala Narasimha Raju and others Versus National Insurance Co. Ltd. and another (2007) 13 SCC 446 and it rejected that a husband would be treated as an employee or as a workman and declined to make the insurer liable. I will apply the same principle and hold that by no stretch of imagination the deceased driver could be taken as workman or paid driver under the owner to claim the

benefit of the package policy and the premium paid for risk to a paid driver. FAO No. 681 of 2004 by the insurer is, therefore, allowed but I will still make the insurer liable under Section 140 of the Motor Vehicle Act in terms of the decision in Eshwarappa @ Maheshwarappa's case (supra). The appeal for enhancement of the legal representative of the deceased cannot be supported and, therefore, FAO No. 258 of 2004 is dismissed.

4. FAO No. 518 of 2004 is a claim by the representative of a gratuitous passenger for whom the insurance cover was surely existed under the package policy. The deceased was 23 years of age and B.Com student. The accident took place on 27.1.2001. The mother was the claimant. The Tribunal had awarded ₹1 lakh as compensation. I will take the average income of the deceased considering the year of death 2000 at ₹5,000/-, taking note of the expectation for a mother and apply the scales of compensation in the manner provided in Sarla Verma Versus Delhi Transport Corporation 2009 (6) SCC 121 by making provision for 50% deduction and apply the scales in terms of Rajesh and others Versus Rajbir and others 2013 (9) SCC 54 for the conventional heads of claim for love and affection and apply the decision in Munna Lal Jain Vs. Vipin Kumar Sharma 2015 (6) SCC 347 for applying the multiplier to be suitable to the age of the deceased. The various heads of claims are tabulated as under:-

Fatal Accident		***Date of accident***	
Age	23	27.1.2001	
Occupation	Student		
Claimants:	Mother		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)

1	Income		5000
2	Add, % of increase		
3	Deduction		2500
4	Multiplicand		30,000
5	Multiplier		18
6	Loss of dependence		5,40,000
7	Medical expenses		
8	Loss of Consortium		
9.	Loss of love and affection for the son		50,000
10	Loss to estate		5,000
11	Funeral Expenses		10,000
	Total	1,00,000	6,05,000

5. The total compensation payable shall be ₹ 6,05,000/- and the additional amount of compensation what has already been determined shall attract interest @7.5% from the date of the petition till the date of payment. The liability shall be on the insurance company. FAO No. 518 of 2004 is allowed to the above extent.

January 7, 2016 **(K. KANNAN)**
prem **JUDGE**