IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 3371 of 2004 (O&M)
Date of decision: January 13, 2016

Pawan Kumar and others
...Appellants
Versus
Ramesh Kumar and others
...Respondents

(2) FAO No. 2916 of 2004 (O&M)

New India Assurance Co. Ltd.
...Appellant
Versus
Narinder and others
...Respondents

(3) FAO No. 2917 of 2004 (O&M)

New India Assurance Co. Ltd.
...Appellant
Versus
Pawan Kumar and others
...Respondents

(4) FAO No. 2918 of 2004 (O&M)

New India Assurance Co. Ltd.
...Appellant
Versus
Ramesh Kumar and others
...Respondents

(5) FAO No. 2919 of 2004 (O&M)

New India Assurance Co. Ltd.
...Appellant
Versus
Pawan Kumar and others
...Respondents

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

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Ajay Jain, Advocate,
for the appellants in FAO No. 3371 of 2004

Mr. Paul S. Saini, Advocate,
for the appellant in FAO No. 2916 to 2919 of 2004.

Mr. Ajay Jain, Advocate,
for respondent No. 7 in FAO No. 2916 of 2004,
for respondent No. 3 in FAO Nos. 2917 and 2918 of 2004 and
for respondent No.5 in FAO No. 2919 of 2004.

Mr. Amit Singla, Advocate,
for the owner-Siri Ram.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above mentioned appeals as they arise out of the same accident.

2. FAO No. 3371 of 2004 is for seeking enhancement of compensation for death of a women aged 53 years. It was claimed that she was doing embroidery and stitching and used to be earning ₹4,000/-. The Tribunal took the income to be ₹1500/- made deduction of 1/3rd and provide compensation of ₹1,34,000/-. The argument is if the income is fixed notionally at ₹1500/- as value of domestic work, no deduction could have been made. The Tribunal awarded no amount towards love and affection.

3. If a petition is filed under Section 163-A of the Motor Vehicle Act, there is no scope for deviation for a manner of how the amounts are specified as payable so long as there is no legislative change in Schedule II. The concepts, which are familiar for loss of love and affection of a child or

the value of the domestic work cannot suffer any reduction cannot be imported in the Scheme of Section 163-A. Even if an argument that she used to earn ₹4,000/- cannot be accepted, for, it would take the case out side the purview of Section 163-A. I am prepared to admit the maximum income possible for a lady of aged 53 years as ₹4,000/-, making a deduction of 1/3rd and take the same to be the contribution to the family. Considering that she was 53 years of age, the multiplier applicable was 11 and the loss of dependency that has to be taken at ₹2,97,833/-. I will make a provision for loss of estate at ₹2500/- and funeral expenses at ₹2,000/- as provided under Seclude II and add the sum to provide for a compensation of ₹3,56,412/-. Various heads of claims are tabulated as under:-

Fatal Accident		***Date of accident***	
Age	53	27.10.1998	
Occupation	Domestic work		
Claimants:	Son, Daughter and husband		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1	Income	1500	4,000
2	Add, % of increase		
3	Deduction (1/3)	1000	2666
4	Multiplicand (annualised)	12000	31,992
5	Multiplier	11	11
6	Loss of dependence	1,32,000	3,51,912
7	Medical expenses		
8	Loss of Consortium		
9.	Loss of love and affection for children		
10	Loss to estate		2500
11	Funeral Expenses	2000	2000
	Total	1,34,000	3,56,412

4. The additional amount of compensation shall also attract interest at the rate of 6% from the date of filing the petition till the date of

payment. The liability shall be in the same manner as determined by the Tribunal.

5. The award stands modified and the appeal is allowed to the above extent.

6. FAO Nos. 2916 to 2919 of 2004 by the insurer are on the issue of liability of the persons injured and person who died, being all passengers in the insured car. The contention of the insurance company was that it was an Act policy and there was no cover of risk to passengers in the car. The evidence was that it was used as a taxi for hire. If the vehicle had been used for the purpose which was not authorized under terms of the policy, the liability cast on the insurer was not competent.

7. Learned counsel appearing on behalf of the owner refers to a judgment in National Insurance Company Limited Versus Smt. Chand Chhabra and others 2012 ACJ 326 wherein this court was considering the case of liability of the insurer when there was absence of plea by the insurer that it was used for hire. That was a case where it was a package policy and, therefore, the award was passed making the insurer liable under the terms of the policy. The said judgment cannot, therefore, apply to a situation that it was an Act policy. In yet another judgment of this Court in Mrs. Rosy Joshi and others Vs. Joginder Singh and others 2005 (2) R.C.R. (Civil) 58, cited by the learned counsel, the passengers had taken the vehicle for hire and the question was whether such fact could absolve the insurance company of the liability. The fact that the deceased did not attribute to the cause of the accident and would not be taken to be a breach of condition to make the insurer avoid the liability. It is not clear from the

judgment about the nature of the policy and it cannot guide a decision that is taken for consideration of liability on the basis of an Act policy. Such judgment cannot, therefore, bring any relief to the owner.

8. The order passed is erroneous. There is no compulsion under Section 147 of the Motor Vehicle Act to cover the risk of a passenger in a private vehicle. The passengers will be covered only in a public service vehicle, as contemplated under Section 147 of the Motor Vehicle Act. If the vehicle itself is insured as a private motor car under Section 147 of the Motor Vehicle Act, the benefit cannot be extended to passengers. The liability cast on the insurer is wrong and set aside.

9. The appeals filed by the insurance company are allowed exonerating the insurance company of the liability and making the owner and the driver to be jointly and severely liable. The additional compensation what has been assessed by this Court in FAO No. 3371 of 2004 will be recovered against the owner and the driver only, consistent with the finding in the appeals preferred by the insurance company. If any amount has been recovered by any of the claimants against the insurer, it shall not press for recovery against them but shall seek indemnity against the driver and the owner. The awards are modified and the appeals are allowed to the above extent.

January 13, 2016 **(K. KANNAN)**
prem **JUDGE**