

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

(1) **FAO No.3629 of 2013 (O&M)**
Date of decision : 24.05.2016

Smt. Omi alias Ompati and another

.....Appellants

Versus

Ram Chander alias Magga and another

...Respondents

(2) **FAO No.10309 of 2014 (O&M)**
Date of decision : 24.05.2016

Shri Ram General Insurance Company Ltd.

.....Appellant

Versus

Smt. Omi alias Ompati and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Harish Nain, Advocate for appellants
in FAO No.3629 of 2013 and for respondents No.1 & 2
in FAO No.10309 of 2014.

Mr. T.K. Joshi, Advocate for respondent No.2
in FAO No.3629 of 2013 and for appellants
in FAO No.10309 of 2014..

DARSHAN SINGH, J.

This judgment shall dispose of both the appeals referred above

which have arisen out of the same award dated 01.04.2013, passed by

learned Motor Accidents Claims Tribunal, Jind (hereinafter called the 'Tribunal'), vide which appellants-claimants of FAO No.3629 of 2013 have been awarded compensation to the tune of Rs.2,62,000/- along with interest at the rate of 9% per annum on account of death of Shalender in the motor vehicular accident which took place on 25.06.2012.

2. FAO No.3629 of 2013 has been filed by the appellants-claimants for enhancement of the amount of compensation. FAO No.10309 of 2014 has been filed by Shri Ram General Insurance Company Ltd. (respondent No.2 in the claim petition) to assail the award.

3. Learned counsel for the appellants-claimants contended that no future prospects have been awarded by the learned Tribunal towards the income of the deceased. The multiplier has also been wrongly applied as per the age of the parents. No amount has been awarded by the learned Tribunal towards love and affection. Thus, he contended that the compensation awarded by the learned Tribunal is highly inadequate.

4. On the other hand, Mr. T.K. Joshi, learned counsel for appellant-Insurance Company contended that the vehicle in question was not insured with the appellant-Insurance Company. The claimants have just produced the copy of the insurance cover note, which cannot establish that the vehicle in question was insured with the appellant-Insurance Company. He contended that the insurance cover note was a forged document. So, no liability could have been fastened on the appellant-Insurance Company.

5. He further contended that the compensation computed by the learned Tribunal is just and appropriate. The deceased was only an

agricultural labourer. So, no future prospects were required to be added to the income of the deceased. Thus, he contended that there is no scope for enhancement of the amount of compensation.

6. I have duly considered the aforesaid contentions.

7. I do not find any substance in the contentions raised by learned counsel for the appellant-Insurance Company. The record of the case shows that in Para No.16 of the written statement, the Insurance Company has taken the plea that Indica car bearing registration No.HR-32B-8928 was not insured with it. Thus, the burden to prove that the car in question was not insured with it, was on the Insurance Company. Respondent No.1 the owner-cum-driver of the car in question has tendered in evidence the cover note Ex.R2 issued on 08.06.2012 by the appellant-Insurance Company with respect to the insurance of the car in question. The same was valid with effect from 10.06.2012 to 09.06.2013.

8. The respondent-Insurance Company has not led any evidence to show that the cover note Ex.R2 was a forged document or that the car in question was not insured with the appellant-Insurance company. Once the insurance cover note Ex.R2 has been brought on record by the insured *i.e.* the owner of the vehicle, it becomes the duty of the appellant-Insurance Company to rebut that evidence, but there is nothing on record to prove that the cover note Ex.R2 produced by the owner-cum-driver of the car in question was a forged document as no such evidence has been adduced by the Insurance Company. So, there is no escape from the conclusion that the car in question was duly insured with the appellant-

Insurance Company on the date of accident.

9. The compensation awarded by the learned Tribunal to the claimants is highly inadequate. The learned Tribunal has taken the income of the deceased to be Rs.6000/- per month as the deceased was an agricultural labourer, but no future prospects have been awarded towards the income of the deceased. It is a fact of common knowledge that even the income of the labourer increases with the passage of time. So, the learned Tribunal was required to add the future prospects towards the income of the deceased. The deceased was only 26 years of age at the time of his death. So, 50% of the income of the deceased was required to be added towards the income of the deceased. The total income comes to Rs.9000/- per month *i.e.* Rs.1,08,000/- per annum. 50% of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.54,000/-. The learned Tribunal has wrongly applied the multiplier as per the age of the claimants/parents of the deceased. As per case ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, the multiplier should have been applied as per the age of the deceased. So, the multiplier of 18 shall be applicable as per the age of the deceased. The loss of dependency comes to Rs.9,72,000/-.

10. The learned Tribunal has awarded only Rs.10,000/- towards funeral expenses, which are required to be enhanced to Rs.25,000/-. The appellants-claimants shall also be entitled to a sum of Rs.1,00,000/- towards loss of love and affection of their son. In this way the total amount of compensation comes to Rs.10,97,000/- (9,72,000 + 25,000 + 1,00,000).

11. Thus, keeping in view my aforesaid discussion, FAO No.3629 of 2013 is hereby partly allowed. The amount of compensation is enhanced to Rs.10,97,000/- from Rs.2,62,000/- as awarded by the learned Tribunal. The claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award. However, FAO No.10309 of 2014, being without any merit, is hereby dismissed.

24.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**