IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No. 1499 of 2015(O&M)

Date of decision :06.09.2016

M/s Oriental Insurance Co. Ltd.

......Appellant

Versus

Pomme and others

........Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Vandana Malhotra, Advocate
for the appellant.

Ms. Suresha Rani, Advocate
for Ms. Ekta Thakur, Advocate
for respondents no. 1and 2.

****

DARSHAN SINGH, J. (Oral)

The present appeal has been preferred by the Oriental Insurance Company Ltd. (respondent no.3 in the claim petition) against the Award dated 01.10.2014 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short 'Tribunal'), whereby claimants-respondents no.1 and 2 have been awarded compensation to the tune of Rs. 09,83,500/- on account of death of Bintesh Kumar in the motor vehicular accident, which took place on 22.12.2012.

2. The present appeal has been preferred by the appellant-Insurance Company in order to assail the award on the point of quantum as well as liability.

3. I have heard Ms. Vandana Malhotra, Advocate, learned counsel

for the appellant-Insurance Company, Ms. Suresha Rani, Advocate, for Ms. Ekta Thakur, Advocate, learned counsel for respondents no.1 and 2 and have carefully gone through the paper book.

4. Learned counsel for the appellant contended that the learned Tribunal has considered the deceased to be an unskilled labourer. But, still his income has been taken to be Rs. 6000/- per month, which is on the higher side as the minimum wages of the unskilled labourer at the relevant time was far less.

5. She further contended that it was established from the evidence on record that the bus in question was being operated without any permit, which was the violation of the terms and conditions of the Insurance policy so the Insurance Company was entitled for total exoneration of any liability to pay the awarded amount.

6. On the other hand, learned counsel for the respondents contended that the learned Tribunal has rightly determined the income of the deceased. Actually, the deceased was a meson by profession and was earning Rs. 8000/- per month.

7. I have duly considered the aforesaid contentions.

8. As per the case of the claimants, deceased Bintesh Kumar was working as mason and was earning Rs. 8000/- per month. The learned Tribunal has not relied upon the oral statement of PW-2-Pammoe, the mother of deceased and treated the deceased to be an unskilled labourer . Learned Tribunal further mentioned that even a daily wager is earning nothing less then Rs. 6000/- per month. Thus, the learned Tribunal has determined the income of the deceased to be Rs. 6000/- per month. No fault can be found with the said conclusion of the learned Tribunal.

9. Respondent no.4, the owner of the bus no. NL-08-B-0329 has not brought on record any permit. The operation/use of the transport vehicle without permit is clearly the violation of the terms and conditions of the Insurance Policy. Learned Tribunal has granted the recovery rights to the appellant-Insurance Company against the owner and driver of the vehicle. In the cases where the terms and conditions of the Insurance Policy are violated generally the Insurance Company is directed to compensate the third party and to recover the amount so paid by it from the insured, who has violated the terms and conditions of the Insurance Policy.

10. Thus, appellant-Insurance Company cannot seek the total exoneration and no illegality has been committed by the Tribunal directing the appellant-Insurance Company to pay the awarded amount to the claimants along with interest and then to recover the same from the driver-owner.

11. Thus, the present appeal is without any merits and the same is hereby dismissed.

(DARSHAN SINGH)
JUDGE

06.09.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No