

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

(1)

FAO No.5789 of 2013 (O&M)

Date of decision : 30.11.2016

Shri Ram General Insurance Company Ltd.

.....Appellant

Versus

Shimla Rani and others

...Respondents

(2)

FAO No.8106 of 2014 (O&M)

Date of decision : 30.11.2016

Shimla and others

.....Appellants

Versus

Gursewak Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Krishna Kant, Advocate for
Mr. Tajender K. Joshi, Advocate for appellant-Insurance
Company in FAO No.5789 of 2013 and for respondent No.2
in FAO No.8106 of 2014.

Mr. P. K. S. Phoolka, Advocate for respondents No.1 to 3-
claimants in FAO No.5789 of 2013 and for appellants in
FAO No.8106 of 2014.

* * * *

DARSHAN SINGH, J.

CM-24118-CII-2013 in
FAO-5789-2013

In view of the reasons mentioned in the application, same is allowed and the delay of 87 days in filing the present appeal is hereby condoned.

CM-21857-CII-2014 in
FAO-8106-2014

In view of the reasons mentioned in the application, same is allowed and the delay of 32 days in re-filing the present appeal is hereby condoned.

CM-21858-CII-2014 in
FAO-8106-2014

In view of the reasons mentioned in the application, same is allowed and the delay of 188 days in filing the present appeal is hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals captioned above which have been arisen out of the same award dated 25.05.2013 passed by the learned Motor Accidents Claims Tribunal, Bathinda (hereinafter called the “Tribunal”), whereby claim petition filed by the appellants-claimants of FAO No.8106 of 2014 under Section 163-A of the Motor Vehicles Act, 1988 (for short the “Act”) has been partly accepted and a compensation of ₹3,51,000/- along with interest at the rate of 7% per annum has been awarded to them on account of death of

Jaswant Singh in the motor vehicular accident which took place on 09.11.2011.

2. FAO No.5789 of 2013 has been filed by Shri Ram General Insurance Company Limited (respondent No.2 in the claim petition) assailing the award, whereas FAO No.8106 of 2014 has been filed by appellants-claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have gone through the paper-book meticulously.

4. Initiating the arguments, learned counsel for the Insurance Company contended that the driving licence of the driver of canter No.HR-39-6919 was not produced before the learned Tribunal, meaning thereby he was not having any driving licence. Thus, the Insurance Company was not at all liable for payment of the amount of compensation and was entitled to be fully exonerated. He further contended that there is no scope of enhancement of the amount of compensation. The learned Tribunal has calculated the amount of the compensation as per the Second Schedule appended to the Motor Vehicles Act, 1988.

5. On the other hand, Mr. P. K. S. Phoolka, Advocate for appellants-claimants contended that deceased was a driver by profession. His income has been taken to be less by the learned Tribunal. The learned Tribunal has also awarded less compensation under conventional heads. Thus, he contended that the just amount of compensation has not been

awarded. He further contended that the learned Tribunal has already awarded the recovery rights to the Insurance Company. The absence of the driving licence was only a violation of the terms and conditions of the insurance policy for which Insurance Company has been granted the recovery rights as the vehicle was insured with the appellant-Insurance Company so the same was duty bound to pay the compensation to the legal representatives of the victim of the accident.

6. I have duly considered the aforesaid contentions.

7. I do not find any substance in the contentions raised by learned counsel for the appellants-claimants that the learned Tribunal has taken the income of the deceased on the lower side. The appellants-claimants have themselves pleaded in the claim petition that the deceased was a truck driver and was earning ₹30,000/- per annum. So, as per the case of the appellants-claimants the monthly income of the deceased was ₹2500/-, but even then the learned Tribunal has taken the income of the deceased to be ₹3000/- per month *i.e.* ₹36,000/- per annum. So, it cannot be stated that the learned Tribunal has taken the income of the deceased on the lower side.

8. I also do not find any substance in the contentions raised by learned counsel for the appellants-claimants that the learned Tribunal has awarded less amount for the conventional heads. The present claim petition has been filed under Section 163-A of the Act. Generally there is no scope for deviation for computation of the compensation from the

structured formula provided in the Second Schedule so long as there is no legislative change in the said Schedule. Reference can be made to cases *Oriental Insurance Company Limited Vs. Meena Variyal and others 2007(2) RCR (Civil) 698, Bajaj Allianz General Insurance Company Limited Vs. Sonu and another 2016(3) PLR 701* and *Ram Partap and others Vs. Chandigarh Transport Undertaking and others 2016(3) Law Herald 2426.*

9. The compensation awarded by the learned Tribunal for funeral expenses and loss to estate is even more than as provided in the Second Schedule appended to the Act, but there will be no justification to interfere with the amount so granted by the learned Tribunal in the absence of any serious challenge to the same by the Insurance Company.

10. I do not find any substance in the contentions raised by learned counsel for the Insurance Company that the Insurance Company was entitled for total exoneration. The Insurance Company has already been granted the recovery rights on the ground that the vehicle in question was being plied without any permit in violation of Section 66 of the Act as well as the terms and conditions of the insurance policy. Even if it is accepted that deceased Jaswant Singh was not having the valid driving licence that will also be the violation of the terms and conditions of the insurance policy and for that also, the Insurance Company will only be entitled for the recovery rights, which have already been granted in the impugned award by the learned Tribunal and the Insurance

Company cannot claim the total exoneration on this ground.

11. Thus, keeping in view my aforesaid discussion, in FAO No.8106 of 2014 appellants-claimants are not entitled for any enhancement of the amount of compensation and in FAO No.5789 of 2013, the appellant-Insurance Company is also not entitled for the total exoneration.

12. Resultantly, both these appeals are without any merits and the same are hereby dismissed.

30.11.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : **Yes / No**
Whether reportable : **Yes / No**