

FAO No.4993 of 2016(O&M)

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In the High Court of Punjab and Haryana at Chandigarh

FAO No.4993 of 2016(O&M)

Date of Decision: 29.11.2016

Magma HDI General Insurance Company Limited ---Appellant

versus

Pardeep Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pankaj Mehta, Advocate for the appellant

Rekha Mittal, J.

CM No. 17144- CII of 2016

Prayer in this application is for condoning delay of 12 days in filing the appeal.

In view of averments made in the application and submissions made by counsel for the applicant, the application is allowed and delay of 12 days in filing the appeal is condoned.

Main case

The present appeal directs challenge against award dated 10.5.2016 passed by the Motor Accidents Claims Tribunal, Karnal (in short “the Tribunal”) whereby compensation has been awarded in favour of Giano Devi and others in regard to death of Chander Bhan in a motor vehicular

accident that took place on 11.4.2015.

Counsel for the insurance company has assailed the award primarily on two counts. The first submission made by counsel is that the Tribunal has awarded an amount of Rs. 5 lakhs for loss of love and affection which is on higher side. Another submission made is that as the offending vehicle, tractor bearing No. HR-05 AN-1517 was laden with a trolley, the vehicle is to be treated as a transport vehicle and as driver of the offending vehicle was not holding a driving licence to drive a transport vehicle, the insured is guilty of committing breach of the terms and conditions of the contract of insurance that entitles the insurance company to seek recovery rights against the insured.

I have heard counsel for the appellant, perused the paper book particularly the award passed by the Tribunal.

The Tribunal has awarded an amount of Rs. 9,67,200/- for loss of dependency. Under conventional heads, an amount of Rs. 20,000/- for funeral expenses, Rs. 1,00,000/- as consortium and Rs. 5,00,000/- towards loss of love and affection has been awarded. The Tribunal has not awarded compensation for loss of estate and compensation for expenses on funeral is also on the lower side. The deceased left behind 8 dependents namely

Giano Devi mother, Rajbati widow and six children (four daughters and two sons). The mother and children of the deceased are entitled to get compensation towards loss of love and affection. Taking into consideration that the Tribunal has not allowed any compensation for loss of estate coupled with the factum that the deceased left behind six children, mother besides widow, I do not find any reason to interfere in the award of Rs. 5,00,000/- towards loss of love and affection.

So far as the plea that driver was not possessing a valid driving licence, the controversy is no longer *res integra* in view of judgment of Hon'ble the Supreme Court of India ***Nagashetty vs. United India Insurance Company Limited, 2001 (4) RCR (Civil) 597*** wherein the Court after taking into consideration the definition of goods carrier, tractor trolley and transport vehicle has negated plea of the insurance company that merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person

having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle. Counsel for the appellant has not disputed that driver of the offending vehicle was holding a driving licence to drive a light motor vehicle. When the facts and circumstances of the present case are examined in the light of observations recorded in *Nagashetty's case (supra)*, I do not find any merit in contention of the appellant that either the driver was not holding a valid driving licence or the insurance company can have recovery rights against the insured by invoking the provisions of Section 149(2) of the Motor Vehicles Act, 1988.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

29.11.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No