IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on: 20.12.2016

1. FAO No.8713 of 2014

Bimla Devi and others ....Appellants

Versus

Rajesh and others

....Respondents

2. FAO No.836 of 2015 (O&M)

Rajesh and another ….Appellants

Versus

Future Generali India Insurance Company Limited and others

….Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Anil Kumar Gahlawat, Advocate
for the appellants (in FAO No.8713 of 2014)
and for respondents No.2 to 5 (in FAO No.836 of 2015)

Mr. Harkesh Manuja, Advocate
for respondents No.1 and 2 (in FAO No.8713 of 2014)
and for the appellants (in FAO No.836 of 2015)

Mr. Pradeep Kumar, Advocate
for respondent No.3 (in FAO No.8713 of 2014)
and for respondent No.2 (in FAO No.836 of 2015)

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.8713 of 2014 *"Bimla Devi and others vs Rajesh and others"* and No. 836 of 2015 *"Rajesh and another vs Future Generali India Insurance Company Limited and others"*, as these have emerged out of the same award dated 13.05.2014 passed by the Motor Accidents Claims Tribunal, Sonepat (in short 'the Tribunal') whereby compensation has been awarded in favour of Bimla Devi and others in regard to death of Ram Kumar in a motor vehicular accident that took place on 13.06.2013.

The Tribunal assessed income of the deceased at Rs.4,500/- per month, deducted 1/4th for personal expenses, applied a multiplier of 13 to compute loss of dependency at Rs.5,26,500/-. In addition, an amount of Rs.5,000/- for funeral expenses, Rs.7,500/- for loss of estate and Rs.1,00,000/- for loss of consortium has been awarded making total compensation to Rs.6,39,000/- payable with interest @ 7.5% per annum from the date of petition till realization. However, the insurance company has been held liable to satisfy the award towards the claimants but given recovery rights against the owner and driver of the offending vehicle.

The appeal i.e. FAO No.836 of 2015 has been preferred by the driver and owner of the offending vehicle in order to assail the findings of the Tribunal on issue No.3 upholding plea of the insurance company that the driver was not possessing a valid driving licence. The other appeal i.e. FAO No.8713 of 2014 has been filed by the claimants seeking enhancement of compensation.

The parties shall be referred to as 'the claimants', 'insurance company' and 'the insured' for the sake of convenience.

1. FAO No.836 of 2015

The sole submission made by counsel for the insured is that as driver of the vehicle was holding a driving licence with an endorsement of HTPV/HPMV valid upto 24.04.2015, the driver was possessing a valid driving licence to drive a light motor vehicle as well as a transport vehicle. It is further submitted that the endorsement made on the driving licence Ex.R3 escaped notice of the Tribunal and led to erroneous findings that the driver did not possess a driving licence to drive the crane with unladen weight 10,100 kilograms.

Counsel for the insurance company, after examining the driving licence – Ex.R3, is not in a position to controvert the submissions made by counsel for the insured.

I have heard counsel for the parties, persued the paperbook and the records.

In view of the endorsement of HTPV/HPMV w.e.f. 27.04.2012 and valid upto 09.02.2014 and thereafter valid upto 24.04.2015 on the driving licence Ex.R3, it is difficult to sustain findings of the Tribunal that the driver did not possess a valid driving licence at the time of occurrence, constituting violation of the terms and conditions of the contract of insurance or a valid defence in favour of the insurance company under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). Accordingly, findings of the Tribunal on issue No.3 against the insured and driver of the offending vehicle are set-aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation to the claimants, in order to indemnify the insured.

2. FAO No.8713 of 2014

Counsel for the claimants has submitted that income of the deceased assessed by the Tribunal is on lower side even if his income is assessed on the basis of minimum wage fixed by the State of Haryana for an unskilled worker. The claimants are entitled to benefit of increase in income for future prospects @ 30% as the deceased was 50 years of age. Compensation awarded under conventional heads needs enhancement.

Counsel for the insurance company has supported the award with the submissions that the Tribunal has taken a reasonable view while assessing compensation for loss of dependency as well as under conventional heads. It is further submitted that as the matter with regard to grant of future prospects is pending consideration before a Larger Bench in view of reference made in ***"National Insurance Company Limited Vs Pushpa and others"*** *vide* ***SLP No.8058/2014,*** the appellants are not entitled to the said benefit.

I have heard counsel for the parties, perused the paperbook and records of the Tribunal.

The Tribunal has assessed income of the deceased at Rs.4,500/- per month. However, by taking into consideration the minimum wage fixed by the State of Haryana for an unskilled worker available in June, 2013, income of the deceased is assessed at Rs.5,250/-. The claimants shall be entitled to benefit of future prospects to the extent of 30%. Mere pendency of reference is not sufficient to deny benefit of future prospects till the judgment ***"Rajesh and others Vs. Rajbir Singh and others",*** **2013(3) R.C.R. (Civil) 170**, is varied or set-aside.

Application claiming compensation was filed by the widow, two sons and mother of the deceased. Bimla Devi, widow of the deceased appeared in the witness-box and tendered into evidence her affidavit Ex.PW1/A. In her cross-examination, she has deposed that

Wazir is 28 years old and is working as a labourer. Taking into consideration statement of Bimla Devi, Wazir cannot be held to be dependent upon income of his father. As there were three dependents on earning of the deceased, admissible deduction would be 1/3rd in place of 1/4th. In view of the above, loss of dependency comes to ***Rs.7,09,800/-*** (Rs.5,250/- x 12 x 13 = Rs.8,19,000/- + Rs.2,45,700/- (30% for future prospects) = Rs.10,64,700/- – Rs.3,54,900/- (1/3rd deduction towards personal expenses).

Under conventional heads, an amount of ***Rs.1,00,000/-*** for loss of consortium awarded by the Tribunal is affirmed. The claimants shall be entitled to ***Rs.25,000/- each*** for expenses on funeral and loss of estate. The sons of the deceased are allowed ***Rs.1,25,000/-*** in equal share and ***Rs.50,000/-*** to the mother for loss of love and affection. The total compensation comes to Rs.10,34,800/- and the enhanced compensation is ***Rs.3,95,800/-*** (Rs.10,34,800/- – Rs.6,39,000/-) payable with interest @ 7.5% per annum from the date of petition till realization. The additional compensation shall be payable to widow of the deceased except the amount of Rs.50,000/- for loss of love and affection to the mother. The enhanced compensation shall be deposited in a nationalized bank for a period of two years.

The appeal filed by the claimants is partly allowed in the aforesaid terms.

20.12.2016 **(REKHA MITTAL)**
yakub **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No