IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2611 of 2002

Date of Decision: August 25, 2017

United India Insurance Company Ltd.

......Appellant

versus

Salemwati and others

.....Respondents

FAO No. 3374 of 2002

Salemwati and others

......Appellants

versus

Gulzar Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL.

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Present: Mr. D.K. Prajapati, Advocate for
Ms. Neena Madan, Advocate
for the appellant in FAO No. 3374 of 2002

Mr. Neeraj Khanna, Advocate
for respondents No. 1 to 6 – Insurance Company in FAO No. 2611 of 2002

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Sudhir Mittal, J.

1. By this common judgment I am deciding the above two appeals (FAO No. 2611 of 2002 and FAO No. 3374 of 2002), one filed by the Insurance Company and the other by the claimants, as they arise out of the same award.

2. Amarjit @ Amra was going from village Mehmoodpur to village

Khudda in a tractor trolley No. PB-13-C-3963 on 18.05.2000. The tractor was loaded with bricks, which were being transported by Amarjit @ Amra (now deceased) to village Khudda for construction of a cattle shed. The bricks were being transported by the deceased for the assistance of his paternal aunt and the tractor trolley, had been borrowed by him for the said purpose, from respondents No. 8 and 9 (owners of the tractor trolley). When the said tractor trolley reached near Keshav Milk Plant on Saha-Shahzadpur Road at about 8.30 A.M. the driver lost control and struck against a standing kikar tree, as a result of which the deceased fell down and died on the spot. The learned Tribunal granted a compensation of ₹ 4,34,145/- vide the impugned award.

3. Aggrieved by the same, the claimants and Insurance Company, are in appeal. The claimants seek enhancement of the compensation, whereas, the Insurance Company seeks to avoid its liability on the ground that the deceased was a gratuitous passenger.

4. I first take up the issue regarding the deceased being a gratuitous passenger. The learned Tribunal has decided this issue as follows:-

> *"In the present case, the deceased was a labourer and was there with the bricks, even brought for construction of cattle-shed. Further reference may be made to* ***New India Assurance Co. vs. Kamla, 2001(1) PLR 830 (SC)****, where it was held that when a valid insurance policy has been issued in respect of a vehicle, the burden is on the insurer to pay compensation to third parties, irrespective of the arrangement of the insured and the insurer inter se. The issue, however, was left open that the amount so paid by the insurer to third parties, can be recovered, if as per the conditions of the policy, the insurer had no liability to pay such sum to the insured. Thus, even from this angle, the Insurance Company can not claim discharge in*

> *making payment to the dependents of the deceased. Support may also be had from* ***M/s United India Insurance Co. Ltd. vs. Pritpal Singh, 1996 (2) TAC 38 (P&H)****.*
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> *In view of the discussion, as made above, the Insurance Company can not claim discharge and is liable to make payment of compensation. Issue No. 3 is, thus decided in favour of the claimants and against the Insurance Company."*

5. I have examined the evidence on record. The relevant part of the examination-in-chief of Salemwati PW-2, is as follows:-

> *"My husband died in a road accident on 18.5.2000 in a road side accident. On that day he was going with tractor trolly for taking the bricks from the brick-kiln to the house of his Bua (father's sister) at village Khudda Kalan, Tehsil & District Ambala as his Bua was to construct a cattle shed and my husband was travelling with the bricks. My husband has borrowed tractor-trolley from some unknown person for transportation of the bricks."*

6. There is no meaningful cross-examination in respect of this part of the statement of PW-2, by the counsel for the insurance Company. The said statement of PW-2, is corroborated by that of Baljit Kumar PW-1, who is brother of the deceased. The relevant part of his examination-in-chief, is as follows:-

> *"The deceased was taking the said tractor trolley loaded with bricks to village Khudda, for constructing the cattle shed in the village. We had borrowed the tractor trolley due to his personal relation which I came to know later on."*

7. It is, thus, established on record that the tractor trolley was being utilized by the deceased for the purpose of transporting bricks for construction of a

cattle shed. Since the deceased was on good terms with the owners of the tractor trolley he had borrowed the same from them. No commercial use of the said vehicle was being made by the owners thereof. Hence, it can not be said that there was any violation of the terms of the Insurance policy. I am supported in my view by judgment of the Hon'ble Supreme Court of India in ***Fahim Ahmad vs. United India Insurance Company Limited and others, 2014(2) RCR (Civil) 470.*** In the said case, sand was being carried in a trolley attached with a tractor for the purpose of construction of underground tank near farm land, for irrigation and it was held by their Lordships' that there was no breach of the condition of the policy as no commerce was involved. This judgment has been followed by a learned Single Judge of this Court in FAO No. 2938 of 2016, titled as ***National Insurance Company Ltd. vs. Kamlesh Rani and others*** decided on 24.5.2016.

8. Learned counsel for the Insurance Company has vehemently argued that the deceased being "gratuitous passenger", there was no liability upon the Insurance Company, as the goods vehicle was being used to transport the passengers and the same is contrary to the terms of the insurance policy.

9. I have carefully examined this argument on the basis of evidence on record. It is well established by the evidence on record that the deceased was transporting bricks for helping out a family member to construct a cattle shed. The said purpose is not a commercial purpose and, thus, it can not be held that the tractor trolley was being used as a "goods carriage". Under these circumstances, the deceased can not be termed to be "gratuitous passenger" and the Insurance Company would be liable to indemnify the owner.

10. Coming to the question of quantum of compensation, there is no dispute about the fact that the deceased was aged 30 years on the date of the accident. It is also established on record that the deceased was running a cycle repair shop. So far as his income is concerned, it has been orally stated by PW-2 and PW-1 that he was

earning ₹ 6000/- per month. However, learned Tribunal has held that the monthly income was only ₹ 2400/- per month. In my opinion, even if the amount claimed by the widow is reduced by half the monthly income would be ₹ 3000/- per month. I, therefore, deem it appropriate to enhance the monthly income of the deceased to ₹ 3000/-. The deceased is survived by widow, three minor children and aged parents. Thus, there are six dependents of the deceased. Keeping in view the judgment of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR(Civil) 77,*** I reduce the monthly income by 1/5th for personal expenses and increase of 50% is required to be granted on account of future prospects. It has been contended on behalf of the Insurance company that in the case of ***National Insurance Company Limited vs. Pushpa and others, 2015(6) RCR(Civil) 844,*** reference has been made to a larger Bench of the Apex Court on 02.07.2014, regarding the correctness of the view in ***Sarla Verma's case (supra)*** that addition to the income of the deceased on account of future prospects must be given even in the case of 'self employed' persons. Be that as it may, in ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447*** decided on 15.05.2015, a three Judges Bench of the Apex Court has allowed future prospects in the case of self employed person and, therefore, I prefer to follow the said judgment for allowing future prospects in the present case. Thus, the monthly dependency would work out to ₹ 3600/- and the annual dependency, accordingly, would be ₹ 43,200/- Since the deceased was aged 30 years, a multiplier of 17 is to be applied and the compensation is assessed as ₹ 7,34,400/-. A sum of ₹ 1,00,000/- is allowed on account of loss of consortium to the widow and a sum of ₹ 2,00,000/- is granted on account of loss of love and affection. ₹ 25,000/- is awarded on account of funeral expenses. The total compensation is, thus, assessed as ₹ 10,59,400/-. The unpaid amount shall carry interest @ 7.5% per annum from the date of claim petition till the date of payment. The Insurance Company is directed to make payment by way of Demand Draft within three months from the date of receipt of certified copy of the judgment.

Accordingly, the appeal of the Insurance Company is dismissed and that of the claimants is allowed. The widow and children of the deceased are entitled to three-fourth of this amount and the parents are entitled to one-fourth of the same.

August 25, 2017 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No