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

FAO No.990 of 1991(O&M) &

XOBJC-47-CII of 1993

Date of decision: 19.9.2017

New India Assurance Co. Ltd. …..Appellant

VERSUS

Sita Ram Pandey and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Deepak Suri, Advocate for the appellant.

Mr. Nitish Garg, Advocate for respondent No.1 and 2/cross objectors.

Mr. Anil Kumar Spehia, Advocate for respondent No.4.

Service upon respondent No.3 already dispensed with vide order dated 04.05.2016.

REKHA MITTAL, J.

This order will dispose of FAO No.990 of 1991 and cross objections No.47-CII of 1993 as these have emerged out of the same award dated 08.05.1991 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Hari Sham, son of the claimants, in a motor vehicular accident that took place on 11.08.1988 within the municipal limits of Ludhiana City.

The Tribunal assessed income of the deceased between Rs.400/- to Rs.500/- per month but computed annual loss of dependency at Rs.2,500/- per annum. By applying multiplier of 16, compensation to the tune of Rs.40,000/- was assessed, payable with interest at the rate of 12% per annum from the date of petition till realization.

FAO No.990 of 1991 has been filed by the New India Assurance Company Ltd. (hereinafter to be referred to as the Company) and the cross objections have been filed by the claimants seeking enhancement of compensation.

FAO No.990 of 1991

The sole submission made by counsel for the Company is that the Company has been wrongly fastened with liability to pay compensation to the claimants as on the day of occurrence i.e. 11.08.1988, there was no subsisting contract of insurance between the insured and the insurance company as is apparent from the cover note and policy exhibited before the Tribunal by the insured. It is argued with vehemence that the Tribunal despite noticing the date of commencement of the contract of insurance being 15th August, 1988 has still proceeded to direct the insurance company to pay compensation to the claimants in order to indemnify the insured/owner of the offending vehicle.

Counsel representing the owner/insured of the offending vehicle, on the contrary, has supported findings of the Tribunal in this regard with the submission that cheque bearing No.0582190 pertaining to payment of premium was issued on 11.08.1988 and the same was delivered to agent of the company on 11.08.1988 itself, therefore, the Company cannot be exonerated from its liability to indemnify the insured by payment of compensation to the victim's family.

There is no dispute that in the cover note as well as in the policy, the policy was to take effect only from 15.08.1988. The insured has not raised any plea of any fraud or misrepresentation by the insurance company. Counsel for the insured has failed to point out any rules applicable to the insurance companies that contract of insurance would come into operation from the date of issue of cheque qua payment of premium or even from payment in cash.

As the policy, on the face of it, was to be effected only from 15.08.1988, the insurer cannot be made liable for an accident that had taken place on 11.08.1988. The award passed by the Tribunal against the insurance company is erroneous and liable to be set aside. The liability to pay compensation shall be of the driver and owner of the offending vehicle. However, in case the insurance company has already paid compensation to the claimants, it shall be entitled to recover the amount from the owner/insured and not from the claimant. At the same time, if no part of the award has been satisfied, the claimants shall enforce it against the insured/owner and driver of the offending vehicle.

The appeal is allowed in the aforesaid terms.

Cross objections No.47-II of 1993

Counsel for the claimants has prayed for enhancement of compensation by making few submissions. The first argument raised by counsel is that the Tribunal has wrongly assessed annual loss of dependency at Rs.2500/-. The deceased was 18 years old, therefore, appropriate multiplier in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** would be 18. The Tribunal has not allowed benefit of increase in income for future prospects in the light of judgment of Hon'ble the Apex Court **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170**. No compensation has been awarded under conventional heads.

Counsel representing the respondents have supported the award with the submission that adequate compensation has been assessed by the Tribunal.

The Tribunal has assessed income of the deceased between Rs.400/- to Rs.500/- per month. Taking into consideration the minimum wage fixed by the State of Punjab and available at the relevant time, income of the deceased is assessed at Rs.500/- per month. There is nothing on record suggestive of the fact that the deceased was suffering from any disability impairing his capacity to work and earn livelihood for himself and his family. The claimants are entitled to additional income for future prospects to the extent of 50%. As the deceased was 18 years old, admissible multiplier would be 18 in the light of judgments of Hon'ble the Supreme Court **Smt. Sarla Verma's case** (supra) and **Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447**. The deceased was unmarried son of the claimants and deduction for personal and living expenses to the extent of 50% is allowed.

In view of the above, loss of dependency is calculated at Rs.81,000/- [Rs.1,08,000/-(Rs.500/- x 12 x 18) + Rs.54,000/- (50% future prospects) – Rs.81,000/- (50% deduction towards personal expenses)].

Under conventional heads, the claimants are allowed an amount of Rs.5000/- for expenses on funeral, Rs.5000/- for loss of estate and Rs.20,000/- for loss of love and affection to the mother.

The total compensation is Rs.1,11,000/- and the additional amount is Rs.71,000/- (Rs.1,11,000/- - Rs.40,000/-). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable by the driver and owner of the offending vehicle held to be jointly and severally liable to pay compensation. The insurance company shall neither be liable to pay compensation assessed by the Tribunal nor the additional amount awarded by this Court in terms of findings recorded in the appeal filed by the Company.

The cross objections are partly allowed in the aforesaid terms.

SEPTEMBER 19, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no