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

Date of decision : 24.11.2017

1. **FAO No.1183 of 2010 (O&M)**

United India Insurance Company Ltd.

... Appellant(s)

Versus

Jora Singh (deceased through LRs) and others

... Respondent(s)

2. **FAO No.4956 of 2010 (O&M)**

Jora Singh (deceased through LRs) and another

... Appellant(s)

Versus

Kulbir Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Bashamboo, Advocate
for the appellant(s) in FAO-1183-2010 and
for respondent No.3 in FAO-4956-2010.

Mr. R.K. Shukla, Advocate
for the appellant(s) in FAO-4956-2010.

Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for respondent No.4 in FAO-1183-2010 and
for respondent No.2 in FAO-4956-2010.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing ***FAO No.1183 of 2010*** preferred by the Insurance Company, challenging the award dated 12.11.2009 of the Motor Accident Claims Tribunal, Patiala (in short 'the Tribunal') on two grounds; i) Quantum as the claimants had stated the income of the deceased as ₹ 3,000/-, but the learned Tribunal has assessed the income as ₹ 4,000/- and therefore, the income of the deceased came to ₹ 48,000/- per annum, which was not within the scope of an application for compensation filed under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act'); ii) the vehicle did not have the permit to ferry the passengers as the bus was being used for educational purposes; and the appeal bearing ***FAO No.4956 of 2010*** preferred by the claimants being parents of Simranjit Singh, for enhancement of the compensation on account of death of their son, who died in a vehicular accident occurred on 10.11.2008.

Learned counsel for the Insurance Company, by taking the second ground viz-a-viz the permit, submitted that since the vehicle was being used for educational purposes and the Clause of exemption under sub-Section 3 (4) of Section 66 of the Act, was omitted w.e.f. 11.08.2000 and therefore, the owner was required to have an effective permit for ferrying the passengers, thus, there was a breach of the terms and conditions of the Insurance Policy, viz-a-viz limitation to use, therefore, learned Tribunal has committed illegality and perversity by fastening the liability upon the Insurance Company. The entire burden should have been fastened upon the owner. In this regard, an application, for production of document dated 13.02.2009, was moved and in the reply dated 18.03.2009 filed by the owner, there was an admission that the vehicle did not have the route permit, therefore, such a defence is available to the Insurance Company under sub-Section 2 of Section 149 of the Act. In support of his contentions, he relied upon the judgment of Hon'ble the Supreme Court in

"National Insurance Company Ltd. V/s Nicolletta Rohtagi and others" 2002 (4) RCR (Civil) 464, "Lakhmi Chand V/s Reliance General Insurance" 2016 (1) RCR (Civil) 794 and the judgment dated 16.07.2014 passed by this Court in ***FAO No.4922 of 2014*** titled as ***"Partap Singh V/s National Insurance Company and others"***.

As regards the quantum, he submitted that the claimants claimed the income of the deceased as ₹ 3,000/-, but learned Tribunal has assessed as ₹ 4,000/-, therefore, it would not fall within the Schedule specified in Section 163-A of the Act as the maximum income for claiming the compensation under Section 163-A of the Act is ₹ 40,000/- p.a., therefore, the appeal is liable to be allowed on this ground.

Viz-a-viz the enhancement of compensation, he submitted that there is no scope of enhancement.

On the other hand, Mr. G.S. Punia, learned Senior counsel assisted by Ms. Harveen Kaur, learned counsel appearing on behalf of the owner submits that the reply to the application clearly lay emphasises on Route 'Permit' and not the "Permit", in other words, he submitted that the Insurance Company has not been able to discharge the onus, which is not on the claimants viz-a-viz the non-availability of the permit. Even when an application to summon the witness was moved, no such officer from the concerned Department to bring the record of the Registration Certification of the Bus bearing No.PB-12-C-1824, came forward, thus, defence under sub-Section 2 of Section 149 of the Act is not available as the Insurance Company failed to discharge the onus, therefore, the judgment cited supra would not come to the aid and rescue of the Insurance Company.

I have heard the learned counsel for the parties and appraised the paper book and of the view that viz-a-viz breach of the terms and conditions of the insurance policy, the registration certificate of the aforementioned vehicle is on record. Before I could advert the arguments, it would be in the fitness of things to extract the contents of the application, reply to the application *ibid* and as well as the application for summoning of the witnesses moved by the Insurance Company, which read as under:-

> *"1. That the above cited claim petition is pending for today for filing of written statement.*
>
> *2. That the below mentioned documents are in possession of respondent No.1 and No.2, which are very much material to be produced on the record for filing of proper and effective written statement by respondent-Company:-*
>
> *i) Driving Licence of the Driver of Vehicle No.PB-12/C/1824.*
>
> *ii) Registration Certificate, Route Permit, Fitness Certificate and Insurance Policy of the above said vehicle.*
>
> *3. That in the interest of justice and for fair decision of the case the application may kindly be allowed.*
>
> *It is, therefore, prayed that application may kindly be allowed and the respondent No.1 and No.2 further may kindly be directed to produce the above said documents on the record.*
>
> ***Reply to the application***
>
> *1. That para No.1 of the application is admitted.*
>
> *2. That the contents of para No.2 of the application as stated are not correct. The documents which are in possession of respondents No.1 and 2 i.e. Driving Licence and the Insurance Policy are being produced before this Honourable Tribunal by submitting their copies alongwith this reply, but the Registration Certificate of the offending vehicle and fitness certificate are in the custody and control of police i.e. Police of Police Station Bhadson District Patiala, in the case FIR*

No.105 dated 10/11/2008 registered under Sections 304-A, 427, 279, 337 IPC and there was no need of any route permit as the vehicle was a school bus.

It is, therefore, prayed that the above noted documents may please be brought on record in the interest of justice.

<u>Application for summoning of witness</u>

1. That the above cited case is now fixed for 04.09.2009 for evidence of respondents.

2. That the respondent-Co. wants to summon the following witness:-

A) M/s Maghi Educational Trust Amloh (Maghi Memorial College), Tehsil Amloh, District Fatehgarh Sahib through its Chairman/Concerned Clerk/person along with the Route Permit, fitness certificate and Driving Licence of driver of Bus No.PB-12-C-1824.

B) Concerned Clerk o/o DTO Fatehgarh Sahib along with complete record regarding the Driving Licence No.5869/C/08 valid from 8.2.2008 to 07.02.2011 in favour of Kulbir Singh S/o Sh. Surinder Singh

and along with complete record regarding transfer of Bus No.PB-12-C-1824 vide No.1623 dated 19.11.08 in favour of Maghi Education Trust, Amloh by DTO Fatehgarh Sahib.

It is, therefore, prayed that the application may kindly be allowed and the above cited witnesses may kindly be summoned in the interest of justice."

On conjoint reading of the aforementioned applications and reply, it has been specifically denied by the owner and driver that there was no route permit and the Insurance Company had also not summoned any witness for discharging the onus viz-a-viz non-availability of the permit in view of omission of the Clause of exemption under sub-Section 3 (4) of Section 66 of the Act. In my view, though defence is available to the Insurance Company under sub-Section 2 of the Section 149 of the Act, which clearly envisages that if the vehicle is not being used for the purpose not allowed by the permit, but the fact of the matter, as noticed above, would reveal that the Insurance Company did not lead any evidence in this regard. No question either in cross-examination or any evidence has been led to prove that the bus did not have the permit to carry the students meant for educational purposes, thus, the judgment cited supra would not come to the aid of the Insurance Company and therefore, the plea of the Insurance Company viz-a-viz the non-availability of the permit is rejected.

As regards the quantum, I am in agreement with the submissions of Mr. Bashamboo as the Tribunal ought not to have taken the income as ₹ 4,000/-, whereas in the claim petition, it was specifically averred that he had been earning ₹ 3,000/-. Since the son of the claimants had died, I do not intend to ponder upon the issue qua maintainability of the petition, at this stage of the matter as the accident had taken place in the year 2008. Accordingly, I take the income of the deceased ₹ 3,000/- and apply 1/3rd deduction and multiplier of 16, the amount of compensation is assessed as under:-

Sr. No.	Heads of claim	Amount (₹)
1	Income	3000
2	Future prospects	
3	Less Deduction (1/3rd)	1000
4	Multiplicand (annualized by multiplying 12)	24000 (2000x12)
5	Multiplier	16
6	Loss of dependence	384000
7	Loss of Consortium	
8	Loss of estate	2500
9	Funeral expenses	2000
	Total	**3,88,500/-**

The total compensation payable shall be **₹ 3,88,500/-**. This amount shall also attract interest @ 7.5% from the date of filing of the claim petition till the date of realization. The liability shall remain the same as has already been determined by the Tribunal. The enhanced amount of compensation shall be paid within a period of three months from the date of the receipt of the certified copy of the order, failing which, it will entail further interest @ 12%.

Viz-a-viz the appeal preferred by the claimants for enhancement of the compensation, I am of the view that there is no scope of enhancement and accordingly, the appeal bearing ***FAO No.4956 of 2010*** is dismissed.

With the aforesaid observations, the appeal bearing FAO No.1183 of 2010 is partly allowed and the appeal bearing ***FAO No.4956 of 2010*** is dismissed.

(AMIT RAWAL)
JUDGE

24.11.2017
Yogesh Sharma

	✓
Whether speaking/reasoned	**Yes/ No**
	✓
Whether Reportable	**Yes/ No**