414 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3706 of 2010 (O&M)
Date of decision: August 04, 2017

Inderjit Singh and others ....Appellants

Versus

Iswar Dass and others ....Respondents

2. **FAO No.3527 of 2009 (O&M)**

National Insurance Company ....Appellant

Versus

Jasbir Kaur and others ....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Chawla, Advocate
for the appellants (in FAO No.3706 of 2010).

Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate
for the appellant (in FAO No.3527 of 2009).

Mr. Vishal Sharma, Advocate for
Mr. Vijay Lath, Advocate
for respondent No.1 (in FAO No.3706 of 2010)
for respondent No.4 (in FAO No.3527 of 2009).

Mr. Karminder Singh, Advocate
for respondent No.2 (in FAO No.3706 of 2010).

Mr. Rajneesh Malhotra, Advocate
for respondent No.5 (in FAO No.3706 of 2010)
for respondent No.7 (in FAO No.3527 of 2009).

AMIT RAWAL, J.(ORAL)

This order of mine shall dispose of two appeals i.e. *FAO No.3706 of 2010* titled as *Inderjit Singh and others Vs. Iswar Dass and others* preferred by the LRs of the deceased-claimants, claiming enhancement of the compensation and *FAO No.3527 of 2009* titled as

National Insurance Company Vs. Jasbir Kaur and others preferred by the National Insurance Company.

Mr. Neeraj Khanna, learned counsel appearing on behalf of National Insurance Company submits that the truck bearing registration No.HP-28-5039 insured with the Insurance Company met with an accident with a bus bearing registration No.PB-07-N-7822 at Village Jainpur, District Nawan Shahar. In fact, it was a case of rash and negligent driving and the liability should have been fastened upon the Insurance Company of the bus insured with the New India Insurance Company represented by Mr. Rajneesh Malhotra, Advocate. The deceased had retired from Air Force and was drawing pension of Rs.2,698/-. He joined a bank drawing the salary of Rs.18,711/- per month, total of which come out Rs.21,409/- per month i.e. Rs.2,56,908/- per annum and after deducting 1/3rd of his income for his own personal expenses and applying the multiplier of 11, the total loss of dependency was assessed at Rs.18,81,000/- as he left behind two daughters and one son, alongwith 9% interest from the date of institution of the claim petition till its realization and therefore, award of the learned Motor Accident Claims Tribunal (for short 'MACT' only) is liable to be modified.

Learned counsel appearing on behalf of the claimants submits that the amount of compensation is on much lesser side and therefore, the amount of compensation is liable to be increased, thus, urges this Court for modification of the award by allowing the appeal.

Mr. Karminder Singh, Advocate submits that the amount of compensation awarded to the claimants does not require any enhancement.

I have heard the leaned counsel for the parties and appraised the paper book.

I am of the view that vis-a-vis the appeal preferred by the Insurance Company i.e. *FAO No.3527 of 2009* is concerned, the arguments raised by the counsel are not sustainable in the absence of any evidence, in essence, the Insurance Company has not led any evidence with regard to deduction of the tax from the salary of the deceased was required to be taken lesser by deducting tax. Neither such point before Tribunal was ever raised, therefore, the same is rejected. As regard the contributory negligence, since the FIR has been lodged against the driver of the truck insured by the appellant-insurance company, therein the *prima facie* negligence of liability ought to have been fastened on the driver of the truck until and unless the same is controverted by placing on record any contrary evidence to prove the negligence of the bus. In the absence of the same, I am of the view that the element of contributory negligence has rightly been rejected, resultantly, finding of Tribunal on this count is upheld.

On the point of enhancement, I am of the view that wife has already died, therefore, no amount is required to be assessed for loss of consortium. The income has been taken as Rs.21,409/- and the multiplier adopted as 11, much less, deduction is also correct, therefore, the appeal of claimants does not require any enhancement.

Both the appeals stand dismissed.

August 04, 2017 **(AMIT RAWAL)**
m. sharma **JUDGE**

Whether Speaking/Reasoned **Yes/No**
Whether Reportable **Yes/No**