IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: May 23, 2017

1. FAO-3377-2012

THE ORIENTAL INSURANCE CO. LTD. ....APPELLANT...

VS.

LOKESH KUMAR AND OTHERS ....RESPONDENTS...

2. FAO-1061-2013

LOKESH KUMAR AND ANOTHER ....APPELLANTS...

VS.

SANDEEP SINGH AND OTHERS ....RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Lalit Garg, Advocate,
for the appellant (in FAO-3377-2012) and
for respondent No.1 (in FAO-1061-2013).

Mr. K.S. Banyana, Advocate,
for the appellants (in FAO-1061-2013) and
for respondents No. 1 and 2 (in FAO-3377-2012).

Mr. N.S. Sidhu, Advocate,
for respondent No.4 (in FAO-3377-2012) and
for respondent No.2 (in FAO-1061-2013).

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<u>JASPAL SINGH, J.</u>

By virtue of this common judgment, this Court intends to dispose of two appeals, one is preferred by claimants bearing FAO No.1061 of 2013, titled as ***"Lokesh Kumar and another v. Sandeep Singh and others"***, seeking enhancement of compensation and another appeal preferred by insurance company bearing FAO No.3377 of 2012, titled as ***"The Oriental Insurance Co. Ltd. and others v. Lokesh Kumar and others"***, challenging the impugned award, vide which, the liability to pay the compensation has been fastened upon insurance company, as both these appeals are out-come of one and the same award dated 17.03.2012 passed by the Motor Accident Claims Tribunal, SAS Nagar Mohali (for short "the Tribunal").

2. Assailing the impugned award, it has been submitted by Mr. K.S. Banyana, Advocate representing Lokesh Kumar and another (appellants) that it has been rightly observed by ld. Tribunal that Smt. Nidhi lost her life in a road accident, due to rash and negligent driving of Bus No. CH-03H-4233 being driven by its driver Sandeep Singh but ld. Tribunal has failed to award just and adequate compensation while passing the impugned award.

3. Undisputably, no amount has been paid on account of loss of love and affection as well as loss of consortium whereas only a sum of ₹20,000/- has been awarded on account of funeral expenses/last rights. Similarly, nothing has been awarded on account of future prospects. Deceased-Smt. Nidhi was aged about 32 years, at the time of her demise, who was self-employed and used to do tuition work. The amount of compensation awarded in lump sum on account of death Smt. Nidhi is unjust and inadequate, especially, in view of the guidelines laid down by Hon'ble Apex Court in case captioned as ***"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another" 2009(3) RCR (Civil) 77*** which has subsequently been approved in case captioned as ***"Rajesh vs. Rajbir 2013 (3) RCR (Civil) 170***. As per the guidelines, the

claimants are entitled for compensation on account of loss of consortium, funeral expenses and loss of love and affection. Thus, appellants-claimants are entitled for a sum of ₹1,00,000/- on account of loss of love and affection, ₹1,00,000/- on account of loss of consortium and ₹5000/- more in addition to ₹20,000/- already awarded by ld. tribunal on account of funeral expenses. As such, appellants-claimants shall be entitled to enhanced compensation to the tune of ₹2,05,000/-.

4. On the other hand, Mr. Lalit Garg, Advocate representing insurance company has submitted that just and adequate compensation has already been awarded by ld. Tribunal. As such, impugned award, so far as, the amount of compensation is concerned, does not require any interference by this Court. However, he has submitted that liability to pay the compensation has wrongly been fastened upon the insurance company. In fact, ld. Tribunal has gravely erred in non-suiting the insurance company in not giving the recovery rights. During pendency of claim petition before ld. Tribunal, insurance company moved an application dated 04.08.2011 for appropriate directions to the owner, driver and respondent No.3 to produce the insurance policy, driving licence of the driver, registration certificate, copy of route permit of the offending vehicle and copy of post mortem report. Thereafter, the insurance company also moved another application dated 25.01.2012 for assessing the diet money for summoning the witnesses i.e. the concerned official from the Registering and Licensing Authority, Chandigarh along with complete record pertaining to vehicle No. CH-03H-4233 along with route permit. However, the respondent-owner has failed to supply the copy of route permit of the offending vehicle. Similarly, witness who was summoned also did not appear in the Court.

Therefore, presumption under Section 114 of the Indian Evidence Act should have been drawn against the owner that he was not possessing valid permit for plying the said vehicle. Therefore, since, there was no valid permit of the said vehicle, insurance company shall be entitled to the recovery rights.

5. While relying upon the judgment of this Court titled as ***"M/s Yadvindra Public School vs. Seema and others,*** it has been submitted by learned counsel for the insurance company that on account of non-production of route permit of the offending bus, ld. Tribunal exonerated the insurance company from its liability holding that the owner of the bus has committed breach of terms of insurance policy.

6. In case, **"National Insurance Co. Ltd. v. Challa Bharathamma and others", (2004) ACC 292 (SC),** it has been observed by Hon'ble Apex Court that a person without permit to ply vehicle cannot be placed at better pedestal vis-a-vis who has permit, but violated the condition thereof. Plying of vehicle without permit is infraction. In view of Section 149(2) of the Motor Vehicles Act, 1988, defence is available to insurer on that aspect, question of policy being operative had no relevance for issuance of liability of insurer and accordingly, recovery rights were given to the insurance company.

7. In the case in hand also, since the respondent-owner had failed to place on record route permit of the bus in question despite direction by ld. Tribunal, he has violated the terms of the insurance policy. He has made himself liable to pay the amount of compensation awarded by ld. Tribunal. Thus, it is held that insurance company is entitled to recover the amount of compensation from the owner, which has been paid or to be paid by the insurance company to the claimants.

8. In the light of what has been discussed above, FAO No.1061-2013 is partly allowed and appellants-claimants shall be entitled to enhanced amount of ₹2,05,000/- in addition to the compensation already awarded whereas FAO No.3377-2012 is also allowed. However, considering the beneficial object of the act, it would be proper for the insurer to first satisfy the award, though in law, it has no liability, and then insurance company shall have the right to recover the amount of compensation paid to the claimants to satisfy the award from the owner.

9. No order to costs.

May 23, 2017 **(JASPAL SINGH)**
sonika **JUDGE**

Whether speaking/reasoned: Yes

Whether reportable: Yes/No