IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.10.2017

FAO 4894 of 2012

Om Parkash and others .... *Appellants*

Versus

Parmal and others ....*Respondent(s)*

FAO 5232 of 2012

Parmal and another ......*Appellants*

v

Oriental Insurance Company Limited and others ......*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. K S Dhanora, Advocate
for the claimants

Mr. Vivek Goyal, Advocate
for the driver and owner of the offending vehicle

Mr. R C Gupta, Advocate
for the Insurance company

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Rekha Mittal, J.

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 05.05.2012 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short, 'the Tribunal') whereby compensation has been awarded in regard to death of Omi Devi in a motor vehicular accident that took place on 24.09.2010.

The Tribunal has awarded a sum of Rs.3,29,960.00, detailed hereunder:-

Annual loss of dependency (4,305.00 per month x 12)	51,660

Deduction 1/3rd	17,220
Multiplier	9
Loss of dependency 51,660-17,220=34,440	3,09,960.00 (34,440x9)
Loss of consortium to husband, love and affection to each family member, funeral expenses and loss of estate	20,000.00
Total	**3,29,960.00**

FAO 4894 of 2012

The claimants are in appeal seeking enhancement of compensation in regard to death of Omi Devi.

Counsel for the appellants has submitted that the Tribunal has assessed loss of dependency on the basis of value of services of deceased as a house maker, therefore, no deduction for personal expenses is to be made. Compensation awarded under conventional heads is penury and liable to be enhanced.

Counsel representing the insurance company, on the contrary, has supported the assessment made by the Tribunal on the premise that adequate compensation has been awarded to the claimants.

The Tribunal has assessed income of the deceased on the basis of value of her services as a house maker. Under the circumstances, no deduction for personal expenses is to be made in the light of enunciation laid down by a Division Bench of this Court in ***Paramjit Singh v Dilbhag Singh alias Bagga and others, 2013 (3) Law Herald 2730***. The Tribunal has rightly adopted multiplier of 9 for computing loss of dependency. In this manner, loss of dependency comes to Rs.4,64,940.00 (4,305x12x9).

Under conventional heads, the Tribunal has awarded a meager amount of Rs.20,000.00. The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium	1,00,000.00
Expenses on funeral/last rites	25,000.00
Loss of love and affection to sons	1,00,000.00

Total compensation is Rs.6,89,940.00 (4,64,940 + 2,25,000) and the additional amount is Rs.3,59,980.00 (6,89,940-3,29,960) which shall carry interest at the rate of 7.5% per annum from the date of petition till payment, payable to husband except loss of love and affection granted to sons of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO 5232 of 2012

The present appeal has been preferred by the owner and driver of the offending vehicle i.e. HR 65 4394 to express their grievance qua findings of the Tribunal in para 24 of the award whereby it has been held that respondent No. 1-driver was possessing licence for driving motorcycle, scooter, car and jeep only but he was driving a totally different class of vehicle i.e. Three wheeler which is in violation of Section 10 (2) of the Act, therefore, the insurer cannot be held liable to pay compensation to the claimants. Further held that as the vehicle was insured with the insurance company, it has to satisfy the award and shall have the right to recover the same along with interest from respondent No. 2/insured. For this purpose, the Tribunal has relied upon judgment of this Court ***Bajaj Allianz General Insurance Company Limited vs Smt. Sangeeta and others***, FAO 2114 of 2010, decided on 19.10.2011.

Counsel for the appellants has submitted that the aforesaid findings recorded by the Tribunal cannot be allowed to sustain in the light of enunciation laid down in the latest judgment of Hon'ble the Supreme Court of India ***Mukund Dewangan v Oriental Insurance Company Limited, 2017 (7) Scale 731***.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal in this regard.

I have heard counsel for the parties, perused the paper book particularly the award and the latest judgment in Mukund Dewangan's case (supra).

Indisputably, driver of the offending vehicle was holding a licence to drive a Car/Jeep. The vehicle in question is a three wheeler that falls within the definition of Light Motor Vehicle defined in Section 2 (21) of the Act. In the light of enunciation laid down in Mukund Dewangan's case (supra), I find merit in contention of the appellant that licence possessed by the driver legally authorizes him to drive the vehicle in question, therefore, plea of the insurance company challenging competency of the driver to drive the vehicle in question is misconceived and liable to be rejected. In this view of the matter, findings recorded by the Tribunal in para 24 of the award are incorrect and accordingly set aside.

For the foregoing reasons, the appeal is partly allowed. The insurance company shall be jointly and severally liable to pay compensation without any right of recovery against the insured.

(Rekha Mittal)
Judge

09.10.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No