IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 1.12.2017

1. **FAO No.568 of 2012(O&M)**

Oriental Insurance Company Ltd. ….Appellant

VERSUS

Rajeshwari Sharma and others .....Respondents

Present: Mr. Sanjiv Pabbi, Advocate for the appellant.

Mr. Inderjeet Sharma, Advocate for respondents No.1 to 4.

*****

2. **FAO No.3550 of 2012(O&M)**

Rajeshwari Sharma and others ….Appellants

VERSUS

Karnail Singh and others .....Respondents

Present: Mr. Inderjeet Sharma, Advocate for the appellants.

Mr. Sanjiv Pabbi, Advocate for respondent No.7.

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.568 and 3550 of 2012 as these have emerged out of the same award dated 25.10.2011 passed by the Motor Accidents Claims Tribunal, Patiala (for brevity 'the Tribunal') whereby compensation has been awarded in regard to death of Vivek Sharma in a motor vehicular accident that took place on 27.12.2001.

The Tribunal has awarded compensation to the tune of Rs.12,62,800/-, detailed hereunder:-

Income of the deceased	Rs.13,104/- per month
Deduction for personal expenses	1/3rd

Multiplier	12
Loss of dependency	Rs.12,52,800/- (Rs.1,04,400/- x 12)
Funeral expenses	Rs.5000/-
Loss of consortium	Rs.5,000/-

Counsel representing the insurance company has assailed the award primarily on two counts. The first submission made by counsel is that the claimants have failed to establish their plea that accident was caused due to rash and negligent driving of truck No.CH-01N-5078 by Karnail Singh, its driver. To bring home his contention, it is argued that in the FIR registered with the police qua the occurrence, particulars of the offending vehicle have not been given. Further argued that the truck in question has been falsely involved in the case for supporting case of the claimants to get compensation. The second submission made by counsel is that Karnail Singh, driver of the alleged offending vehicle, was not possessing a valid driving licence, therefore, the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative right of recovery against the insured after payment to the claimants in case findings on issue No.1 are affirmed. For this purpose, he has invited attention of the Court towards document Ex.R6 marked as such on 30.09.2011 whereby a report was received from the Regional Transport Officer, Nashik that licence No.3802/R is not issued by the said office.

Counsel representing the claimants has supported findings of the Tribunal on all the issues except to contend that compensation awarded by the Tribunal is on lower side and liable to be enhanced. It is argued that deceased was working as Deputy Manager in Himachal Futuristic

Communications Ltd., New Delhi, at a salary of Rs.24,998/-. The Tribunal has wrongly ignored various allowances paid to the deceased while assessing his income at Rs.13,104/- in place of taking total salary into consideration for computing loss of dependency. It is further argued that the Tribunal has not allowed benefit of increase in income for future prospects and adequate compensation under conventional heads. For this purpose, reference is made to latest judgment of Hon'ble the Supreme Court in **SLP (Civil) No.25590 of 2014 titled National Insurance Company Ltd. Vs. Pranay Sethi and others, decided on 31.10.2017**.

Counsel for the Insurance Company, in reply, has supported assessment of compensation made by the Tribunal by contending that adequate compensation has been awarded.

I have heard counsel for the parties, perused the paper-books and the records.

Sanjay Kumar, an eye-witness to the occurrence, appeared in the witness box to establish plea of the claimants that accident was caused due to rash and negligent driving of truck No.CH-01N-5078 by Karnail Singh in which Vivek Sharma sustained injuries near Neel Kanth Dhaba within the area of village Dholamajra, Tehsil Shahbad, District Kurukshetra on Delhi-Amritsar road. Counsel for the insurance company has failed to point out any materials elicited in cross examination of Sanjay Kumar to prove that his testimony is not worthy of credence or he was not present at the spot at the time of occurrence. There is no challenge to findings of the Tribunal that Sanjay Kumar is not an interested witness much less beneficiary of compensation to be allowed in favour of the claimants. The driver of the offending vehicle did not appear in the witness box to counter testimony of Sanjay Kumar when otherwise, on due investigation of the FIR, he was put to trial for causing the accident resulting in death of Vivek Sharma. Under the circumstances, I find myself unable to accept submissions of counsel for the insurance company that findings of the Tribunal on issue No.1 are erroneous and liable to be interfered with.

This brings the Court to the issue of driving licence possessed by Karnail Singh, driver of the offending vehicle. Perusal of the records would reveal that driving licence of Karnail Singh bears No.3802/R Nashik issued on 01.12.2001. The Tribunal received the first report dated 02.07.2011 marked as Ex.R4. The said report pertains to MDL No.3082/R dated 30.12.2004 and it was reported by the Assistant Regional Transport Officer, Nashik that the aforesaid licence was not issued by his office and the information may be treated as Nil. The insurance company prayed for another opportunity to seek report from the licensing authority pertaining to licence No.3802/R as noticed in the order dated 13.09.2011 passed by the Tribunal. The insurance company was allowed one more last and final opportunity to conclude its evidence on 30.09.2011 but somehow the office of District Judge, Patiala under signatures of Superintendent of the said office forwarded copy of order dated 13.09.2011 to the Regional Transport Officer for report. A report was received marked as Ex.R6 that licence No.3802/R is not issued by that office. The first report was received from the office of Regional Transport Officer, Nashik pertaining to licence No.3082/R dated 30.12.2004 and as such it can be safely inferred that the second report was also received with regard to licence No.3802/R of the same date and not of licence No.3802/R dated 01.12.2001. As the insurance company failed to lead clear, cogent and convincing evidence to discharge onus of issue No.2 that driver of offending vehicle was not possessing a valid driving licence, it can neither be heard to say that findings of the Tribunal on issue No.2 are not based upon materials on record or the same are liable to be set aside by accepting plea of the insurance company that Karnail Singh was not possessing a valid driving licence. That being so, the insurance company cannot press its right of recovery against the insured on this count.

Coming to plea of the claimants seeking enhancement of compensation, it has been proved on record that the deceased was working as Manager in Himachal Futuristic Communications Ltd., at salary of Rs.24, 998/-. The Tribunal in para 16 of the award has given the details namely basic salary and allowances plus deductions made from salary of the deceased. In view of the judgments of Hon'ble the Supreme Court in **Manasvi Jain versus Delhi Transport Corporation, (2014) 13 SCC 22** and **Shyamwati Sharma and others v. Karam Singh and others, (2010) 12 SCC 378**, the entire salary of the deceased is to be taken into account for computing loss of dependency. Gross pay of the deceased was Rs.24,998/- per month and the annual salary was Rs.24,998/- x 12 = Rs.2,99,976/-. After deducting tax liability of Rs.65,273/- per annum, income available for computing loss of dependency is Rs.2,34,703/-.

The deceased was born on 14.08.1971 and slightly more than 30 years on the day of occurrence. The claimants shall be entitled to increase in income for future prospects to the extent of 40%. As the deceased was more than 30 years old, admissible multiplier would be 16. The deduction for personal expenses to the extent of $1/3^{rd}$ is affirmed. In this manner, loss of dependency comes to Rs.35,04,898/- [Rs.37,55,248/- (Rs.2,34,703/- x 16) + Rs.15,02,099/- (40% towards future prospects) – Rs.17,52,449/- ($1/3^{rd}$ deduction towards personal expenses)]

The claimants shall be entitled to following compensation under conventional heads in the light of **Pranay Sethi and others' case** (supra):-

Loss of consortium	Rs.40,000/-
Funeral expenses/last rites	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.35,74,898/- and the additional amount is Rs.23,12,098/- (Rs.35,74,898/- - Rs.12,62,800/-), payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow and minor child of the deceased in the ratio 40:60. The amount falling to share of the minor shall be deposited in a Fixed Deposit Receipt till he attains the age of majority or for a period of three years, whichever is later.

For the foregoing reasons, the appeal filed by the insurance company fails and is accordingly dismissed. However, appeal filed by the claimants is partly allowed in the aforesaid terms.

DECEMBER 1, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no