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

**Date of decision: 4.9.2017**

1. **FAO No. 5204 of 2013(O&M)**

Cholamandlam MS General Insurance Co. Ltd. ....Appellant

VERSUS

Suman Devi and others .....Respondents

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Mr. Balraj Gujjar, Advocate for respondents No.1 to 3.

Mr. Ajay Vijarania, Advocate for respondent No.4 and 5.

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2. **FAO No. 5205 of 2013(O&M)**

Cholamandlam MS General Insurance Co. Ltd. ....Appellant

VERSUS

Murti Devi and others .....Respondents

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Mr. Balraj Gujjar, Advocate for respondents No.1 to 3.

Mr. Ajay Vijarania, Advocate for respondent No.4 and 5.

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3. **FAO No. 4766 of 2015(O&M)**

Murti Devi and others ....Appellants

VERSUS

Ramesh Kumar and others .....Respondents

Present: Mr. Balraj Gujjar, Advocate for the appellants.

Mr. Ajay Vijarania, Advocate for respondent No.1.

Ms. Vandana Malhotra, Advocate for respondent No.3.

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4. **FAO No. 4768 of 2015(O&M)**

Suman Devi and others ....Appellants

VERSUS

Ramesh Kumar and others .....Respondents

Present: Mr. Balraj Gujjar, Advocate for the appellants.

Mr. Ajay Vijarania, Advocate for respondent No.1.

Ms. Vandana Malhotra, Advocate for respondent No.3.

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

**REKHA MITTAL, J.**

This order shall dispose of FAO Nos.5204 and 5205 of 2013 and 4766 and 4768 of 2015 as these have emerged out of the same accident and same award dated 05.04.2013 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Satyapal and Suresh Kumar in a motor vehicular accident that took place on 05.11.2010.

FAO Nos.5204 and 5205 of 2013 have been filed by the Cholamandlam MS General Insurance Company Ltd. (hereinafter to be referred as the 'Company') to assail its liability to pay compensation as well as quantum of compensation assessed by the Tribunal.

FAO No.4766 of 2015 has been filed by Murti Devi and others (hereinafter to be referred as the claimants) seeking enhancement of compensation in regard to death of Suresh Kumar.

FAO No.4768 of 2015 has been filed by Suman Devi and others (hereinafter to be referred to as the claimants) for enhancement of compensation on account of death of Satyapal.

**FAO Nos.5204 and 5205 of 2013**

Counsel for the insurance company has raised an issue common to both the cases that the insurance company is not liable to pay compensation as Satyapal and Suresh (since deceased) were travelling in Pick up Dalla bearing No.HR-61-8972 (alleged offending vehicle) as gratuitous passengers. It is further argued that the vehicle in question is a goods carrier and the insurance policy issued under Section 147 of the Motor Vehicles Act, 1988 (in short 'the Act') does not cover risk of death or injury for a gratuitous passenger in a goods vehicle. To substantiate her contentions, it has been argued that as per version recorded in the FIR, deceased had gone to Dadri for buying certain goods for his children, sufficient to falsify the story that they have purchased washing machine, mattresses and refrigerator vide documents mark-G to H and stated to be carried in the offending vehicle. Another submission made by counsel is that no evidence has been adduced by the claimants that any such goods were recovered from the offending vehicle in pursuance of the FIR registered with the police. In addition, it is argued that Satyapal was an employee of Army, therefore, it is difficult to believe that he would purchase washing machine, mattresses and refrigerator from the market in place of military canteen where such like goods are available at subsidized rates. The last submission made by counsel is that the documents marked G to H have been fabricated for the purpose of present case and in the bills there is also reference to the time of purchase which is against ordinary business practice.

Counsel representing the claimants, on the contrary, has supported the findings of the Tribunal negating plea of the insurance company that the deceased were gratuitous passengers in the offending vehicle. It is argued that in countryside, requirement of a family is represented to be requirement of the children as has been referred to in the FIR. Further argued that the deceased hired the offending vehicle for going to Charkhi Dadri for the purpose of transporting the goods to be purchased from Charkhi Dadri. It is further argued that mere fact that the claimants have not adduced evidence to prove recovery of the goods carried in the vehicle is not sufficient to reject their claim that the deceased were travelling in the vehicle along with the goods purchased by them from Charkhi Dadri.

With regard to the occurrence in question, FIR No.413 dated 06.11.2010 was registered at Police Station Sadar Charkhi Dadri under Sections 279 and 304-A IPC against driver of the offending vehicle on the statement of Shamsher, an eye-witness to the occurrence. In the FIR, it has been specifically averred that Suresh, Satyapal and Sombir along with Shamsher had gone to Charkhi Dadri for purchasing articles for the children and the accident took place on their way back to their village. Shamsher, author of the FIR, appeared in the witness box and reiterated his version brought forth in the application for compensation. Counsel for the Company has failed to point out any material and tangible facts elicited in cross examination of Shamsher to discard or disbelieve his testimony or impeach his credibility. Taking into consideration duly sworn testimony of Shamsher, the Tribunal has rightly negated plea of the insurance company that the deceased were gratuitous passengers in the offending vehicle. This apart, the insurance company in reply to the claim applications has not raised any specific plea that the deceased were gratuitous passengers in the offending vehicle.

The claimants have produced on record bills mark G, H and I of an electronics shop. The bills also contain the time of purchase of goods. Counsel for the insurance company may be right in her statement that in normal and routine practice, time of purchase is not mentioned on the bills, however the insurance company has not examined a representative of the said electronic shop to falsify claim of the claimants that the goods carried in the offending vehicle were purchased from the said shop on 05.11.2010. The mere fact that no recovery of goods from the offending vehicle has been proved is not sufficient to reject testimony of Shamsher. Similarly the fact that Satyapal was an employee of the Army is not sufficient to reject plea of the claimants that Satyapal and Suresh purchased articles namely washing machine, mattresses and refrigerator from Charkhi Dadri which was being carried in the offending vehicle. This Court in **FAO No.3726 of 2013 titled Iffco Tokio General**

**Insurance Company Ltd. Vs. M/s Parwati and others, decided on 14.03.2016** has held that it would be an utter travesty of justice for an insurer to deny the accident when the insured was not prepared to deny the same. The Court has no reason to suspect that there was any collusion between owner and driver, for, nothing was brought by the insurer to say that the owner and driver were not co-operating with the insurer and they had fraudulently lent their names and their vehicle as having been involved in the accident. In the case at hand, driver of the offending vehicle did not appear in the witness box to deny that Satypal and Suresh hired the vehicle in question for the purpose of transporting their goods which were to be purchased at Charkhi Dadri. In this view of the matter, I do not find any error much less illegality in the findings of the Tribunal that the deceased cannot be held to be gratuitous passengers travelling in the vehicle in question.

**FAO No.4766 of 2015**

The Tribunal has assessed income of the deceased at Rs.4348/- per month, added 30% for future prospects, deducted 1/4$^{th}$ towards personal and living expenses of the deceased and applied a multiplier of 17 to compute loss of dependency to the tune of Rs.8,64,756/-. In addition, an amount of Rs.10,000/- for transportation of dead body, Rs.10,000/- for funeral expenses, Rs.8,000/- on account of love and affection and Rs.10,000/- for loss of consortium has been awarded making total compensation to Rs. 9,02,756/- payable with interest at the rate of 6% per annum from the date of petition till realisation.

Counsel for the claimants would urge that the Tribunal has allowed increase in income for future prospects to the extent of 30% but the same is required to be 50% as the deceased was less than 40 years of age. The compensation awarded under conventional heads need re-look and enhancement in the light of judgment of Hon'ble the Supreme Court **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** and **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945.**

Counsel representing the insurance company has submitted that as per date of birth certificate of deceased Suresh, he was born on 30.05.1979, therefore, he was 31 years old in November 2010 and the admissible multiplier in the circumstances would be 16 in place of 17.

The Tribunal has assessed income of the deceased on the basis of minimum wage available to an unskilled worker at the relevant time. There is no denial that the deceased was less than 40 years of age, therefore, admissible increase in income for future prospects would be 50%. As rightly pointed out by counsel for insurance company, date of birth recorded in the certificate relied upon by the claimants would prove that the deceased was more than 31 years at the time of occurrence. Under the circumstances, admissible multiplier would be 16. In this manner, loss of dependency comes to Rs.9,39,168/- [ Rs.8,34,816/- (Rs.4348/- x 12 x 16) + Rs.4,17,408/- (50% towards future prospects) - Rs.3,13,056/- (1/4$^{th}$ towards personal expenses)].

Under conventional heads, an amount of Rs.1,00,000/- for loss of consortium to the widow, Rs.1,50,000/- to children for loss of love and affection, care and guidance of their father, Rs.50,000/- for loss of love and affection to father of the deceased, Rs.25,000/- for transportation of dead body and funeral expenses and Rs.25,000/- for loss of estate is awarded.

In view of the above, total compensation is Rs.12,89,168/- and the additional compensation is Rs.3,86,412/- (Rs.12,89,168/- - Rs.9,02,756/-), which shall carry interest at the rate of 7.5% per annum from the date of petition till realisation except for the period of delay of 620 days, payable exclusively to widow of the deceased except the amount of loss of love and affection allowed in favour of the children and father of the deceased. The amount falling to the share of the widow shall be deposited in a Fixed Deposit Receipt for a period of three years.

**FAO No.4768 of 2015**

The Tribunal assessed income of the deceased at Rs.17,081/- per month, added 50% for increase towards future prospects, deducted 1/3rd for personal expenses and applied a multiplier of 18 to compute loss of dependency to the tune of Rs.36,89,496/-. In addition, an amount of Rs.10,000/- for transportation of dead body, Rs.10,000/- for funeral expenses, Rs.8,000/- on account of love and affection and Rs.10,000/- for loss of consortium has been awarded making total compensation to Rs.37,27,496/- payable with interest at the rate of 6% per annum from the date of petition till realisation.

Counsel for the claimants would urge that the compensation awarded under conventional heads needs enhancement in the light of judgments relied upon in **<u>Rajesh and others case</u>** (supra) and **<u>Vimal Kanwar and others case</u>** (supra).

Counsel representing the insurance company, on the contrary, argued that PW-4 Jai Singh examined by the claimant to prove salary of the deceased Satyapal has deposed in his cross examination that full salary of the deceased for a period of 15 years and 3 months shall be given to his wife. It is argued with vehemence that in the light of ratio laid down in **<u>Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569</u>**, amount admissible to wife of the deceased is liable to be deducted from the compensation to be assessed with regard to death of Satyapal.

Counsel for the claimants, in reply, has submitted that no such payment representing salary of the deceased has been paid to his wife and the documents Annexure A-1 and A-2 produced on record are sufficient to prove that statement of PW-4 in this regard cannot be taken into consideration for denying just and reasonable compensation to the claimants. Further argued that the Tribunal has rightly ignored the said fact brought in cross examination of Jai Singh PW-4 in absence of any documentary evidence that Smt. Suman Devi is getting salary of her deceased husband.

The claimants produced on record PPO order (Annexure A-1) sufficient to establish plea of the claimants that widow of the deceased was sanctioned family pension on the basis of basic pay last drawn, class allowance, increment and D. Allowance. The army authorities declined request of the widow for special family pension on the premise that

Satyapal died in road accident and his death is not attributable to nor aggravated by military service.

Counsel for the Company has failed to refer to any rules applicable to employees of army that the family is paid full pay of a deceased member of armed forces for any number of months/years. The very fact that the army authorities have sanctioned pension payable to widow of the deceased on account of death of Satyapal on 06.11.2010 is sufficient to reject oral statement of Jai Singh PW-4 that widow of the deceased shall be entitled to full salary for a period of 15 years and 3 months. I have yet to come across a single case wherein army personnel's family is paid salary for a particular period after death of the employee more particularly in the circumstances that death of Satyapal is neither attributable to nor aggravated by military service. Under the circumstances, the Tribunal has rightly ignored statement of Jai Singh PW-4 in this regard or contention of the insurance company on the basis thereof.

The deceased died in November 2010. Annual loss of dependency at salary of Rs.17,081/- plus 50% thereof comes to Rs.3,07,464/-. Taking into consideration the income exempted from tax in the concerned financial year (Rs.1,60,000/-), taxable income would be Rs.1,47,464/- at the rate of 10% and tax liability comes to Rs.14,746/-. After deducting 1/3rd for personal expenses and tax liability, annual income available for loss of dependency comes to Rs.1,95,145/-. After applying a multiplier of 18, loss of dependency comes to Rs.35,12,610/- (Rs.1,95,145/- x 18).

Under conventional heads, an amount of Rs.1,00,000/- for loss of consortium to the widow, Rs.1,50,000/- to children for loss of love and affection, care and guidance of their father, Rs.25,000/- for transportation of dead body and funeral expenses and Rs.25,000/- for loss of estate is awarded.

In view of the above, total compensation comes to Rs.38,12,610/- and the additional compensation is Rs.85,114/- (Rs.38,12,610/- - Rs.37,27,496/-), which shall carry interest at the rate of 7.5% per annum from the date of petition till realisation except for the period of delay of 620 days, payable exclusively to children of the deceased to be deposited in a Fixed Deposit Receipt till they attain the age of majority. Interest accrued on the FDRs shall be payable to mother for meeting expenses of the children.

**SEPTEMBER 4, 2017** **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no