IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.12.2017

FAO No.3638 of 2015 (O&M)

Maya and another ...Appellants

Versus

Noor Mohmad and others ...Respondents

FAO No.3639 of 2015 (O&M)

Smt. Mahendri and another ...Appellants

Versus

Noor Mohmad and others ...Respondents

FAO No.7168 of 2014 (O&M)

Ismail ...Appellant

Versus

M/s HDFC Ergo General Insurance Co. Ltd. and others ...Respondents

FAO No.1742 of 2015 (O&M)

M/s HDFC Ergo General Insurance Co. Ltd. ...Appellant

Versus

Kavita and others ...Respondents

FAO No.1741 of 2015 (O&M)

M/s HDFC Ergo General Insurance Co. Ltd. ...Appellant

Versus

Sunder and others ...Respondents

FAO No.1740 of 2015 (O&M)

M/s HDFC Ergo General Insurance Co. Ltd. ...Appellant

Versus

Bharat Lal and others ...Respondents

FAO No.1739 of 2015 (O&M)

M/s HDFC Ergo General Insurance Co. Ltd. ...Appellant

Versus

Dheeraj Sharma and others ...Respondents

FAO No.1743 of 2015 (O&M)

M/s HDFC Ergo General Insurance Co. Ltd. ...Appellant

Versus

Smt. Mahendri and others ...Respondents

FAO No.1738 of 2015 (O&M)

M/s HDFC Ergo General Insurance Co. Ltd. ...Appellant

Versus

Maya and others ...Respondents

FAO No.1744 of 2015 (O&M)

M/s HDFC Ergo General Insurance Co. Ltd. ...Appellant

Versus

Smt. Bedbati and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sagar Aggarwal, Advocate
for the appellants in FAO Nos.3638 and 3639 of 2015 and
for respondents No.1 & 2 in FAO Nos.1738 and 1743 of 2015.

Ms. Vandana Malhotra, Advocate
for the insurance company-HDFC Ergo General In. Co. Ltd.

Mr. J.S. Hooda, Advocate
for the claimants in FAO Nos.1741, 1742 and 1744 of 2015.

Mr. Johan Kumar, Advocate
for the appellant in FAO No.7168 of 2014.

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REKHA MITTAL, J. (Oral)

CM No.10810-CII of 2015 in FAO No.3638 of 2015

Heard.

For the reasons stated in the application, same is allowed. Delay of 323 days in filing the appeal is condoned subject to the condition that the claimants shall forgo interest for the period of delay in case compensation is enhanced.

Main Cases

This order will dispose of FAO Nos.7168 of 2014, 1738 to 1744, 3638 and 3639 of 2015 as these have emerged out of the same award dated 31.03.2014 passed by the Motor Accidents Claims Tribunal, Palwal whereby compensation has been awarded with regard to death of Ravinder Singh, Paran, Mahender Singh and Arjun and injuries sustained by Dheeraj Sharma, Bharat Lal and Kavita.

FAO No.3638 of 2015 has been filed by the claimants seeking enhancement of compensation in regard to death of Ravinder Singh; FAO No.3639 of 2015 for enhancement of compensation in regard to death of

Pawan, FAO Nos.1738 to 1744 of 2015 have been filed by the HDFC Ergo General Insurance Co. Ltd. (in short 'the insurance company') whereas FAO No.7168 of 2014 has been filed by owner of offending vehicle i.e. dumper bearing No.HR-55-J/2502.

For the sake of convenience, parties shall be referred to as the insurance company, claimants and the appellant (owner of the vehicle).

FAO Nos.1738 to 1743 of 2015

Counsel for the insurance company of dumper No.HR-55-J/2502 has submitted that as the accident took place due to overloading of three wheeler bearing No.HR-38Q-9089 driven by Sattar in which the deceased/injured were travelling at the time of accident, the present is certainly a case of contributory negligence, therefore, the driver, owner and insurer of dumper cannot be fastened with entire liability to pay compensation.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 with the submission that testimonies of various injured examined in the case prove in an unequivocal terms that accident was the result of rash and negligent driving of dumper by its driver Noor Mohd. Further argued that criminal proceedings with regard to causing of accident were lodged against Noor Mohd. who was put to trial for committing offence punishable under Sections 279, 337, 338 and 304-A IPC. It is further argued that the driver, owner and insurer of dumper failed to bringforth any tangible material to shatter evidentiary value of testimonies of Sunder PW4, Smt. Kavita PW5, Dheeraj Sharma PW8 and Bharat Lal PW9. It is further argued that the Tribunal has rightly held that driver of the dumper being at elevated position is to be blamed for causing the accident by relying upon judgment **Dadi Kamurawa Vs. Gershe Buchirha, 2013(4) ALT.**

I have gone through findings of the Tribunal on issue No.1 and so also testimonies of occupants of three wheeler and eye-witnesses to the occurrence and the statement of Noor Mohd., driver of the dumper (alleged offending vehicle).

Perusal of the facts brought on record leaves no manner of doubt that accident occurred because of collision between the three wheeler and the dumper. Sunder and others examined on behalf of the claimants were tested in cross-examination but counsel for the insurance company has failed to point out any facts elicited in their cross-examination to support contention of the insurance company that the present is a case of composite negligence of the dumper and the three wheeler. In this view of the matter, I find myself unable to accept contention of the insurance company that the Tribunal has committed an error much less illegality in answering issue No.1 against driver of the alleged offending vehicle i.e. dumper bearing No.HR-55-J/2502. This apart, even if there was composite negligence of the two vehicles involved in the occurrence, the legal representative(s) of the deceased and so also the injured were at liberty to prefer their claim for compensation against either of the joint tort-feasers.

Indisputably, the driver, owner or insurer of the three wheeler are not party to the claim applications, therefore, the Tribunal was not obligated to apportion the extent of negligence attributable to the vehicle, had it arrived at a conclusion that the present is a case of composite negligence. Analyzed from any angle, the insurance company of dumper No.HR-55-J/2502 cannot escape its liability to satisfy the third party claim. In this view of the matter, the appeals preferred by the insurance company raising an issue qua negligence are liable to be dismissed and ordered accordingly.

FAO No.3638 of 2015

With regard to death of Ravinder, the Tribunal has assessed compensation to the tune of Rs.6,73,500/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6500/-
2. Addition in income for future prospects	50%
3. Deduction for personal expenses	1/2nd
4. Multiplier	11
5. Loss of consortium	Rs.10,000/-
6. Loss of estate	Rs.10,000/-
7. Expenses on last rites and transportation	Rs.10,000/-

Counsel for the claimants would urge that the Tribunal has allowed multiplier of 11 on the basis of age of the claimants in place of appropriate multiplier as per age of the deceased. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, would urge that the Tribunal has wrongly assessed income of the deceased at Rs.6500/- per month by relying upon salary certificate Ex.P5 despite noticing that deceased was paid Rs.5661/- in January, 2011, Rs.5803 in February, 2011 and Rs.3564/- in March, 2011. Another submission made by counsel is that the Tribunal has allowed increase in income for future prospects at 50% but the same cannot be more than 40%. The Tribunal has wrongly allowed compensation qua loss of consortium as the deceased was unmarried.

The Tribunal has assessed income of the deceased on the basis of salary certificate Ex.P5. The deceased was 19 years of age and stated to be working as press operator with M/s Krishna Enterprises, Alwar. Taking into consideration the amount paid to the deceased in January, 2011, February, 2011 and part of March, 2011 as he died on 21.03.2011, income of the deceased is assessed @ Rs.5800/- per month. In view of the latest enunciation laid down by the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270,** claimants shall be entitled to increase in income for future prospects to the extent of 40%. As the deceased was 19 years old, admissible multiplier in the light of judgments of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** and **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315,** would be 18 as per age of the deceased. In this manner, loss of dependency comes to Rs.5800 x 12 x 18 + 40% (future prospects) – 50% (deduction for personal expenses) = Rs.8,76,960/-.

Under conventional heads, claimants shall be entitled to

Rs.30,000/-, detailed hereunder:-

1. Expenses on funeral	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

The total compensation comes to Rs.9,06,960/- and the additional amount is Rs.2,33,460/- (9,06,960 – 6,73,500), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay to mother of the deceased.

FAO No.3639 of 2015

With regard to death of Pawan, the Tribunal has assessed compensation to the tune of Rs.4,75,500/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Addition in income for future prospects	50%
3. Deduction for personal expenses	1/3rd
4. Multiplier	11
5. Loss of consortium	Rs.10,000/-
6. Loss of estate	Rs.10,000/-
7. Expenses on last rites and transportation	Rs.10,000/-

Counsel for the claimants has submitted that the Tribunal has wrongly applied multiplier of 11 in place of appropriate multiplier of 18 on the basis of age of the deceased. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, would urge that the deceased was a student, therefore, claimants are not entitled to increase in income for future prospects. It is further argued that as the application for compensation was filed by mother and younger brother of the deceased, deduction for personal expenses should be 50%.

Counsel for the claimants, in reply, has submitted that the deceased was 19 years young energetic boy and his mother was solely dependent upon him as she had lost her husband. It is further argued that had the deceased remained alive, he would not have stagnated at income of Rs.4500/- per month. It is further argued that as the deceased left behind a younger brother dependent upon him, Tribunal has rightly applied deduction of 1/3rd for personal expenses.

The plea of the claimants is that the deceased was a student of MBA. There is no evidence on record with regard to educational qualification of the deceased much less his being a student of MBA. However, the deceased was 19 years old. There is nothing on record suggestive of the fact that he was suffering from any disability to impair his capacity to work and earn livelihood for himself and his family. The Tribunal has assessed income of the deceased by taking into consideration the minimum wage of an unskilled worker. It is difficult to accept that the deceased would have stagnated at that income had he remained alive. Under the circumstances, the claimants shall be entitled to benefit of increase in income for future prospects to the extent of 40%.

The Tribunal has allowed deduction for personal expenses to the extent of 1/3rd. Application for compensation was filed by mother and younger sibling of the deceased. There is only one sibling of the deceased who has claimed compensation. The present case does not fall in category of exceptional cases to deviate from formula laid down in **Sarla Verma's case** (supra). That being so, admissible deduction for personal expenses would be 50% in place of 1/3rd. However, claimants shall be entitled to get compensation by adopting multiplier of 18. In this manner, loss of dependency comes to Rs.4500 x 12 x 18 + 40% (future prospects) – 50% (deduction for personal expenses) = Rs.6,80,400/-.

Under conventional heads, claimants shall be entitled to following compensation:-

1. Expenses on funeral	Rs.15,000/-
2. Loss of estate	Rs.15,000/-
Total	**Rs.30,000/-**

The total compensation comes to Rs.7,10,400/- and the additional amount is Rs.2,34,900/- (7,10,400 – 4,75,500), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay to mother of the deceased.

FAO No.1744 of 2015

With regard to death of Mahender Singh, the Tribunal has assessed compensation to the tune of Rs.18,26,884/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Addition in income for future prospects	50%
3. Deduction for personal expenses	1/4th
4. Multiplier	15
5. Loss of consortium	Rs.10,000/-
6. Loss of estate	Rs.10,000/-
7. Expenses on last rites and transportation	Rs.10,000/-
8. Medical bills	Rs.8,85,184/-

Counsel for the insurance company would urge that as deceased Mahender Singh is held to be 40 years of age, admissible increase for future prospects should be 25%.

Counsel for the claimants, on the other hand, has submitted that there is nothing on record suggestive of the fact that the deceased was more than 40 years of age, therefore, admissible addition for future prospects would be 40%. Another submission made by counsel is that adequate compensation may be allowed under conventional heads.

The Tribunal has held that the deceased was 40 years of age. As has been rightly argued by counsel for the claimants that there is no evidence on record that the deceased was more than 40 years of age. Accordingly, the claimants are entitled to increase in income for future prospects to the extent of 40%. The income, multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.4500 x 12 x 15 + 40% (future prospects) – 1/4th (deduction for personal expenses) = Rs.8,50,500/-.

The claimants shall be entitled to following compensation under conventional heads:-

1. Loss of consortium to the widow	Rs.40,000/-
2. Expenses on funeral	Rs.15,000/-
3. Loss of estate	Rs.15,000/-
Total	**Rs.70,000/-**

The medical expenses to the tune of Rs.8,85,184/- allowed by the Tribunal are affirmed. In this manner, total compensation comes to

Rs.18,05,684/-. There is difference of only Rs.21,200/- in the compensation assessed by the Tribunal and of this Court. Under the circumstances, in the interest of justice, assessment made by the Tribunal is affirmed.

FAO No.7168 of 2014

Counsel for the appellant would urge that the Tribunal seriously erred by upholding plea of the insurance company that driver of offending vehicle dumper No.HR-55-J/2502 was not holding a valid licence at the time of occurrence. It is argued that holding of two driving licences by a person may constitute an offence under the Motor Vehicles Act, 1988 but if either of the licences is found to be valid, authorising the driver to drive the vehicle of class involved in the occurrence, insurance company can neither claim exoneration of its liability nor press for recovery right against the insured.

The second submission made by counsel is that Shree Niwas Rao, Senior Clerk, ARTO Office, Farukhabad was examined and he has proved that there is entry at Sr. No.1096/FKD/03 in the name of Noor Mohd. son of Sultan for motorcycle and LMV private for the period 01.02.2003 to 11.02.2015. It is further argued that the report Ex.RW5/1 cannot be used against the appellant merely because there is no entry in the records of concerned licensing authority with regard to deposit of fee.

Another submission made by counsel is that Ismail, registered owner of the vehicle appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.RW2/A wherein he had categorically deposed that after verifying all the antecedents of respondent No.1 and genuineness of driving licence No.1096/2003 issued on 01.02.2003 and valid upto 24.08.2006, renewed upto 23.08.2012 by the licensing authority, Fatehgarh, Farukhabad, UP, he employed respondent No.1 as his driver on the said vehicle. It is further argued that as the appellant gave employment to Noor Mohd. after verifying driving licence possessed by him and accepting it genuine, the appellant cannot be held guilty of intentional breach of terms and conditions of contract of the insurance to provide right of recovery in favour of the insurance company. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **United India Insurance Company Limited Vs. Lehru, 2003(2) RCR (Civil) 278.**

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issues No.3 and 4.

Be that as it may, assuming that Noor Mohd. was holding two licences referred to in para 31 of the award, the same is not sufficient to accept plea of the insurance company that driver was not possessing a valid licence. Perusal of the driving licence of Noor Mohd. available on record would reveal that there is an endorsement of transport w.e.f. 24.08.2006. The licence was renewed from 24.08.2009 to 23.08.2012. It was lastly renewed w.e.f. 10.12.2012 to 09.12.2015. The Tribunal has not adverted to testimony of Ismail RW2 with regard to his having employed Noor Mohd.

as a driver after verifying his antecedents and licence No.1096/2003 which was valid upto 24.08.2006 with regard to transport vehicle and further renewed upto 23.08.2012. When the facts brought on record in view of testimony of Ismail are examined in the light of judgments of Hon'ble the Supreme Court in **Lehru's case** (supra) and **Pepsu Road Transport Corporation Vs. National Insurance Company Limited, 2013 (4) RCR (Civil) 273,** plea of the insurance company that the insured is guilty of committing breach of terms and conditions of the contract of insurance cannot be accepted and deserves rejection. In this view of the matter, I find merit in contention of the appellant that the insurance company cannot press for right of recovery against the insured much less driver of the offending vehicle. The insurance company can neither claim exoneration from its liability to pay compensation nor press for right of recovery.

For the foregoing reasons, the appeal is partly allowed. Findings of the Tribunal on issues No.3 and 4 are set aside. As a natural corollary, insurance company shall be jointly and severally liable to pay compensation to the claimants.

12.12.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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