IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.12.2017

1. **FAO No.4114 of 2015(O&M)**

Hanifa and others …..Appellants

VERSUS

Warish and others .....Respondents

Present: Mr. Barjinder Singh, Advocate for the appellants.

Mr. Arjun Attri, Advocate for respondent No.2.

Mr. Rajbir Singh, Advocate for respondent No.3.

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2. **FAO No.4792 of 2015(O&M)**

Jamil Ahmed …..Appellant

VERSUS

Shri Ram General Insurance Co. and others .....Respondents

Present: Mr. Arjun Attri, Advocate for the appellant.

Mr. Rajbir Singh, Advocate for respondent No.1.

Mr. Barjinder Singh, Advocate for respondent Nos.5 to 9.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.(Oral)

CM No.13211-CII of 2015 in FAO No.4114 of 2015

Prayer in this application is for condonation of delay of 116 days in filing the appeal.

Heard.

In view of averments made in the application supported by affidavit of Hanifa, widow of the deceased and one of the claimants coupled with legislative intent behind the provision providing for compensation to the victim family, the application is allowed and delay of 116 days in filing the appeal stands condoned, subject to condition that in case the appellants succeed in appeal, they will forego interest for the period of delay.

Disposed of accordingly.

FAO Nos.4114 and 4792 of 2015

This order will dispose of FAO Nos.4114 and 4792 of 2015 as these have emerged out of the same award dated 11.09.2014 passed by the Motor Accidents Claims Tribunal, Mewat (for brevity 'the Tribunal') whereby compensation has been awarded in regard to death of Rashid in a motor vehicular accident that took place on 24.05.2012.

FAO No.4114 of 2015 has been filed by the claimants seeking enhancement of compensation whereas FAO No.4792 of 2015 has been filed by the registered owner of offending vehicle.

FAO No.4114 of 2015

The Tribunal has awarded compensation to the tune of Rs.7,33,400/-, detailed hereunder:-

Monthly income of the deceased	Rs.4,850/-
Deduction for personal expenses	1/4th
Multiplier	16
Loss of dependency	Rs.6,98,400/- (Rs.43,650/- x 16)
Funeral expenses	Rs.25000/-
Loss of consortium	Rs.10,000/-

Counsel for the claimants has submitted that the Tribunal has not allowed benefit of increase in income for future prospects to the extent of 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.** Adequate compensation may be allowed under conventional heads.

Counsel representing the respondents, on the contrary, has supported assessment of compensation.

The deceased left behind his widow, four children and widowed mother, held entitled to get compensation. The claimants shall be entitled to increase in income for future prospects to the extent of 40%. As such loss of dependency comes to Rs.9,77,760/- [Rs.9,31,200/- (Rs.4850/- x 12 x 16) + Rs.3,72,480/- (40% towards future prospects) – Rs.3,25,920/- (1/4th deduction towards personal expenses].

The claimants shall be entitled to following compensation under conventional heads in the light of judgment in **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.10,47,760/- and the additional amount is Rs.3,14,360/- (Rs.10,47,760/- - Rs.7,33,400/-), payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 116 days, to be shared by the claimants in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.4792 of 2015

Jamil Ahmed, registered owner of offending vehicle bearing No.HR-66-6972 has filed the appeal to assail findings of the Tribunal recorded in para 24 of the award whereby the insurance company has been given right of recovery against respondents No.1 and 2 therein namely Warish and Jamil Ahmed, driver and owner respectively of the offending vehicle.

The sole submission made by counsel for the appellant is that as the vehicle in question stood sold by Jamil Ahmed to Abdul Gaffar on 02.04.2010/28.04.2010 and by Abdul Gaffar to Rahish son of Hajar Khan on 10.05.2012 prior to the accident on 24.05.2012, the appellant is not liable to pay compensation nor the insurance company can assert right of recovery against him. It is further submitted that the appellant has filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for adducing additional evidence to produce on record affidavit (Annexure A-1) as an evidence of sale of the vehicle in question.

Counsel representing the insurance company has supported findings of the Tribunal upholding plea of the insurer that the insured is guilty of violating the terms and conditions of the policy. It is argued that the insurance company filed an application calling upon the respondents to produce the documents namely registration certificate, driving licence and permit but the same were not produced. The application was disposed of by the Tribunal with the observation that inference regarding non-production of documents against respondents would be drawn at the time of final decision of the case. It is further argued that as respondent No.1

therein namely Warish failed to produce his driving licence and the owner failed to produce the permit on record, it has rightly been held by the Tribunal that the insurance company is entitled to recovery against the insured and driver of the vehicle.

Be that as it may, perusal of the written statement filed by respondents No.1 and 2 would make it evident that no such plea was raised by the appellant (respondent No.2) that the vehicle in question stood sold by him in favour of Abdul Gaffar and by Abdul Gaffar to Rahish son of Hajar Khan prior to the occurrence. As the appellant did not raise any such plea, there is no reason to permit additional evidence to be adduced in this regard. Even otherwise, application for additional evidence does not fall within the purview and ambit of either all or any of the clauses (a), (aa) and (b) of Rule 27 of the Order 41 CPC. This apart, affidavit (Annexure A-1) is not per se admissible in evidence. Examined from any angle, there is no merit in the plea for adducing additional evidence and accordingly the same is rejected.

In absence of any plea by the appellant that the vehicle stood sold prior to the occurrence, he cannot be heard to say that he is not liable to pay compensation. Examined from another angle, the appellant continued to be registered owner of the vehicle on the day of occurrence. Therefore, when the case is examined in the light of enunciation by Hon'ble the Supreme Court of India in **Pushpa alias Leela and others Vs. Shakuntla and others, AIR 2011 SC 682**, contention raised by the appellant is not meritorious and deserves rejection.

The driver of the offending vehicle did not produce the driving licence to enable the insurance company to seek necessary verification. The very fact that neither the driver nor owner of the vehicle produced the driving licence, an adverse inference is to be drawn that driver did not possess licence. In this view of the matter, no error much less illegality can be noticed in findings of the Tribunal that the insured is guilty of violating terms and conditions of the contract of insurance.

This brings the Court to the issue of permit. Perusal of para 24 of the award would reveal that as per order dated 22.07.2014 passed by the Tribunal, respondent No.1, 2(a) and 2(b) were directed to supply copy of registration certificate, driving licence and permit of offending vehicle by 13.08.2014. Even vide order dated 13.08.2014, the Tribunal ordered to draw an adverse inference regarding non-production of the aforesaid documents by respondent No.1, 2(a) and 2(b). There was no direction issued to respondent No.2, registered owner of the vehicle for production of permit qua the vehicle in question. This apart, counsel for the insurance company has fairly informed that as gross vehicle weight is less than 3500 KGs, vehicle in question does not require permit in view of the provisions of Section 66 of the Motor Vehicles Act, 1988. Under the circumstances, the Tribunal has committed a serious error by holding that the insured has committed breach of the policy by failing to produce the permit/route permit. The findings recorded by the Tribunal giving recovery right to the insurance company on account of failure to produce the permit/route permit are liable to be set aside and ordered accordingly.

For the foregoing reasons, appeal filed by registered owner of the vehicle is disposed of with modification in the aforesaid terms. The insured is guilty of committing breach of the terms and conditions of the contract of insurance for non-possession of licence by the driver, right of recovery given to the insurance company against the insured, after payment to the claimants, is kept intact. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

DECEMBER 19, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no