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

Date of decision:20.11.2017

1. **FAO No.5968 of 2014(O&M)**

Ashok Kumar ….Appellant

VERSUS

Nirmala Devi and others .....Respondents

Present: Mr. S.P. Soi, Advocate for the appellant.

Mr. Virender Partap Singh, Advocate for respondent Nos.1 and 2.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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2. **FAO No.5969 of 2014(O&M)**

Ashok Kumar ….Appellant

VERSUS

Soma Devi and others .....Respondents

Present: Mr. S.P. Soi, Advocate for the appellant.

Mr. Virender Partap Singh, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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3. **FAO No.5970 of 2014(O&M)**

Ashok Kumar ….Appellant

VERSUS

Ichhaya Rani and others .....Respondents

Present: Mr. S.P. Soi, Advocate for the appellant.

Mr. Virender Partap Singh, Advocate for respondent Nos.1 and 2.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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4. **FAO No.5971 of 2014(O&M)**

Ashok Kumar ….Appellant

VERSUS

Sarishta Devi and others .....Respondents

Present: Mr. S.P. Soi, Advocate for the appellant.

Mr. Virender Partap Singh, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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5. **FAO No.5972 of 2014(O&M)**

Ashok Kumar ….Appellant

VERSUS

Sarishta Devi and others .....Respondents

Present: Mr. S.P. Soi, Advocate for the appellant.

Mr. Virender Partap Singh, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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6. **FAO No.1583 of 2015(O&M)**

Soma Devi ….Appellant

VERSUS

Ashok Kumar and others .....Respondents

Present: Mr. Virender Partap Singh, Advocate for the appellant.

Mr. S.P. Soi, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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7. **FAO No.5229 of 2015(O&M)**

Sarishta Devi and another ….Appellants

VERSUS

Ashok Kumar and others .....Respondents

Present: Mr. Virender Partap Singh, Advocate for the appellants.

Mr. S.P. Soi, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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8. **FAO No.8283 of 2015(O&M)**

Nirmala Devi and another ….Appellants

VERSUS

Ashok Kumar and others .....Respondents

Present: Mr. Virender Partap Singh, Advocate for the appellants.

Mr. S.P. Soi, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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9. **FAO No.7928 of 2015(O&M)**

Ichhaya Rani and another ….Appellants

VERSUS

Ashok Kumar and others .....Respondents

Present: Mr. Virender Partap Singh, Advocate for the appellants.

Mr. S.P. Soi, Advocate for respondent No.1.

Mr. Neeraj Khanna, Advocate for respondent-Insurance Company.

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CORAM: HON’BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.5968 to 5972 of 2014, 1583, 5229, 8283 and 7928 of 2015 as these have emerged out of the same accident in which separate awards dated 15.01.2014 by the Motor Accidents Claims Tribunal, Pathankot (for brevity 'the Tribunal') have been passed whereby compensation has been awarded on account of death of Vikram Kumar @ Bhola, Rohit Sharma, Daljit Singh, Naveen Sharma and Ashok Kumar in a motor vehicular accident that took place on 13.08.2009 when the deceased were travelling in car bearing No.HR01-L-0488 driven by Sham Lal (since deceased) and the ill-fated car reached Mangla Bharia Road, District Chamba and fell in a gorge due to rash and negligent driving of Sham Lal, its driver. FIR No.190 dated 13.08.2009 under Sections 279, 304-A IPC was registered against the driver.

FAO Nos.5968 to 5972 of 2014 have been filed by Ashok Kumar, the registered owner of the car in question (hereinafter to be referred as the appellant).

FAO Nos. 1583, 5229, 8283 and 7928 of 2015 have been filed by the claimants seeking enhancement of compensation (hereinafter to be referred as the claimants).

The National Insurance Company Ltd. shall be referred to as the Company whereas Davinder Singh son of Sh. Ajit Singh shall be referred to as the respondent.

FAO Nos.5968 to 5972 of 2014

Counsel for the appellant has assailed the awards dated 15.01.2014 whereby the appellant has been held liable to pay compensation being registered owner of the vehicle in question and the Company has been held entitled to recover compensation from the appellant after satisfying the award towards the claimants. To bring home his contention, counsel has two-fold submissions to make. The first submission made by counsel is that the offending vehicle Indica Car bearing No.HR-01-L-0488 was sold by the appellant to respondent Davinder Singh son of Ajit Singh long before the accident vide affidavit Ex.RC. It is argued with vehemence that as the appellant was no longer owner of the vehicle in question, the Tribunal has committed a grave error by fastening liability to pay compensation upon the appellant and liberty to the insurance company to recover compensation after payment to the claimants. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **HDFC Bank Limited Vs. Kumari Reshma and others, 2015(3) SCC 679**.

The second submission made by counsel is that in case plea of the appellant in the aforesaid regard is not accepted, insurance company has wrongly been given right of recovery as it has failed to adduce any evidence much less cogent and convincing that the insured is guilty of committing breach of terms and conditions of the contract of insurance by allowing the vehicle to be used for hire or reward. It is further argued that the Company cannot derive any advantage to its contention from fact elicited in cross examination of Ichhaya Rani PW-1 in MACT case **Ichhaya Rani and others Vs. Ashok Kumar and others** and statement of Sarishta Devi PW-1 in case Sarishta Devi Vs. Ashok Kumar etc.

According to counsel, statement of the aforesaid witnesses that the deceased hired the vehicle/car for going to Manimahesh from village Gandla Lahri and five persons including their son hired the car is nothing but mere hearsay, therefore, not admissible in evidence.

Counsel representing the company, on the other hand, has supported findings of the Tribunal upholding plea of the claimants that the appellant being the registered owner of the vehicle in question is liable to pay compensation. Further argued that as claimants themselves admitted that the vehicle in question was hired by the deceased for going to Manimahesh and owner of the vehicle did not appear in the witness box to controvert this plea of the claimants, evidence on record is more than sufficient to establish plea of the company that the insured is guilty of breaching the terms and conditions of contract of insurance entitling the Company to be exonerated of its liability or in the alternative pressing for right of recovery against the insured after payment to third party, as has been held by the Tribunal.

Counsel representing respondent-Davinder Singh would urge that the appellant has failed to substantiate his plea that he had sold the vehicle in question to Davinder Singh by way of an affidavit when otherwise indisputably, the appellant continued to be the registered owner of the vehicle as per records of the Registering Authority.

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

The issues that fall for determination are (i) Whether Ashok Kumar can escape his liability to pay compensation on the plea that he had already sold the vehicle in question to Davinder Singh son of Ajit Singh,

(ii) Whether findings of the Tribunal that the vehicle in question was being used for hire/reward, amounting to violation of terms and conditions of the contract of insurance are erroneous and liable to be set aside.

Davinder Singh has denied that he was owner of the vehicle in question or the same was sold by Ashok Kumar to him by way of an affidavit. Davinder Singh appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.RW1/A. In para 3 of the affidavit, he has categorically deposed that he is not owner of the vehicle in question and has been wrongly impleaded as respondent. He was cross-examined by the contesting party i.e. counsel representing Ashok Kumar – appellant. He has denied the suggestion that the car in question was purchased by him from Ashok Kumar on 18.07.2009. He has further denied that affidavits were executed with regard to sale and purchase of the vehicle in question. No such affidavit purported to be executed by Davinder Singh was put to him in his cross examination. Counsel for the appellant has failed to point out any such facts elicited in testimony of Davinder Singh to substantiate his plea that the vehicle in question was sold by him to Davinder Singh on 18.07.2009 or Davinder Singh was in control or possession of the vehicle in question on the day of accident. Not only this, Ashok Kumar did not appear in the witness box either to establish his claim that he had sold the vehicle in question to Davinder Singh on 18.07.2009 or controvert testimony of Davinder Singh who has denied him to be owner of the vehicle in question or his liability to pay compensation.

Counsel representing the appellant got recorded statement dated 08.01.2014 tendering documents Ex.RB to Ex.RE. The documents Ex.RC and Ex.RD are purported affidavits of Ashok Kumar and Davinder

Singh with regard to sale and purchase of the vehicle in question. No doubt, in the proceedings before the Tribunal, strict principles of law of evidence are not attracted but nevertheless as there is a serious dispute between the appellant and respondent with regard to ownership of the vehicle in question (a factual/civil dispute) and Davinder Singh has denied sale and purchase of the vehicle in question, tendering of affidavits in the statement of counsel for the appellant is not sufficient to discharge onus by the appellant that the car in question already stood sold by the appellant to respondent prior to the accident in question. Under the circumstances, the appellant cannot derive any advantage to his contention from the judgment of Hon'ble the Supreme Court in **Kumari Reshma and others' case** (supra) though the said judgment was rendered by Hon'ble the Apex Court in the peculiar facts and circumstances where the motor vehicle is the subject of hire-purchase agreement or an agreement of lease or an agreement of hypothecation in which case the person in possession of vehicle under that agreement is deemed to be owner for the purpose of deciding the question of liability. On the contrary, Hon'ble the Supreme Court in **Pushpa alias Leela and othes Vs. Shakuntala and others, AIR 2011 SC 682** has held in para 14, quoted hereinbelow:-

> "The decision in T.V. Jose (Dr.) was rendered under the Motor Vehicles Act, 1939. But having regard to the provisions of Section 2(30) and Section 50 of the Act, as noted above, the ratio of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name he was indemnified and the claim will be shifted to the insurer, Oriental Insurance Company Ltd."

In this view of the matter, there is no merit in contention of the appellant that either he was not owner of the vehicle in question on the day of accident or the vehicle was owned by Davinder Singh on the basis of affidavits or the Tribunal has wrongly fastened liability upon the appellant being registered owner of the vehicle in question. Under the circumstances, issue No.1 is answered against the appellant.

This brings the Court to the second question as to whether findings of the Tribunal upholding plea of the Company that the vehicle was used for hire, constituting breach of terms and conditions of contract of insurance are liable to be set aside. Sarishta Devi mother of Naveen Sharma (since deceased) appeared in the witness box and tendered into evidence her affidavit Ex.AW1/A. In her cross examination by counsel for all the respondents before the Tribunal, she has deposed to the following effect:-

> "The deceased hired the vehicle/car for going to Manimahesh from village Gandla Lahri and five persons including my son hired the car."

The correctness of this statement of Sarishta Devi has not been challenged by counsel for the appellant before the Tribunal even by way of suggestion. A statement to the similar effect was made by Ichhaya Rani mother of Daljit Singh (since deceased) examined as one of the claimants in application for compensation qua death of Daljit Singh. The driver of the vehicle in question also died in the occurrence. Ashok Kumar failed to establish his plea that the vehicle stood sold to Sh. Davinder Singh on 18.07.2009. Ashok Kumar did not appear in the witness box to rebut testimony of the aforesaid claimants or say on oath that the vehicle was not taken on hire by the deceased or the capacity in which the deceased were travelling in the vehicle in question for going to Manimahesh located in district Chamba (Himachal Pradesh). There cannot be better evidence than admission of a party to the *lis*. In the given circumstances, contention of the appellant that either facts elicited in cross examination of Sarishta Devi and Ichhaya Rani cannot form the basis for recording a finding in favour of the Company or the Company has failed to establish its plea with regard to the insured being guilty of breach of terms and conditions of the contract of insurance is not meritorious and liable to be rejected. That being so, the Tribunal has not committed any error by holding that the insured is guilty of violating the terms and conditions of contract of insurance entitling the Company to have right of recovery against the insured after payment of compensation to the claimants.

No other point has been raised.

For the foregoing reasons, appeals filed by the appellant – Ashok Kumar (FAO Nos.5968 to 5972 of 2014) fail and accordingly dismissed leaving the parties to bear their own costs.

FAO No.8283 of 2015

The Tribunal assessed compensation to the tune of Rs.4,47,000/- on account of death of Vikram Singh @ Bhola, detailed hereunder:-

Monthly loss of income	Rs.4,000/-
Deduction for personal expenses	50%
Multiplier	18
Loss of dependency	Rs.4,32,000/- (Rs.24,000/- x 18)

Loss of estate	Rs.10,000/-
Funeral expenses	Rs.5000/-

Counsel for the claimants would contend that income of the deceased assessed by the Tribunal is on lower side. The Tribunal has not allowed benefit of increase in income for future prospects. Adequate compensation may be allowed under conventional heads.

Counsel representing the respondents, on the contrary, has supported assessment of compensation by the Tribunal with the submission that no addition is justifiable in the given circumstances.

The Tribunal has assessed income of the deceased at Rs.4,000/- per month. There is no clear evidence available on record with regard to income of the deceased. When the case is examined in the light of minimum wage available at the relevant time, plea of the claimants for enhancement of income is not tenable. However, claimants shall be entitled to increase in income for future prospects to the extent of 40% in the light of 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**. The multiplier and deduction for personal expenses applied by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.6,04,800/- [Rs.8,64,000/- (Rs.4,000/- x 12 x 18) + Rs.3,45,600/- (40% towards future prospects) - Rs.6,04,800/- (50% deduction for personal expenses)].

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

Expenses on funeral/last rites	Rs.15,000/-

Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.6,34,800/- and the additional compensation is Rs.1,87,800/- (Rs.6,34,800/- - Rs.4,47,000/-), 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 449 days.

Disposed of accordingly.

FAO Nos.1583, 7928 and 5229 of 2015

The Tribunal assessed compensation to the tune of Rs.4,47,000/- on account of each death of Rohit Sharma, Daljit Singh and Ashok Kumar detailed hereunder:-

Monthly loss of income	Rs.4,000/-
Deduction for personal expenses	50%
Multiplier	18
Loss of dependency	Rs.4,32,000/- (Rs.24,000/- x 18)
Loss of estate	Rs.10,000/-
Funeral expenses	Rs.5000/-

As case of Rohit Sharma, Daljit Singh and Ashok Kumar is exactly identical with that of Vikram Singh @ Bhola, the claimant in each case shall be entitled to compensation of Rs.6,34,800/- and additional amount of Rs.1,87,800/- (Rs.6,34,800/- - Rs.4,47,000/-) with interest in terms of decision in FAO No.8283 of 2015 except for the period of delay of 96 days in FAO No.1583 of 2015, 485 days in FAO No.7928 of 2015 and 350 days in FAO No.5229 of 2015.

Disposed of accordingly.

NOVEMBER 20, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no