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

**FAO No.6629 of 2014 (O&M)**
Date of decision: 02.11.2017

SHRI RAM GENERAL INSURANCE CO LTD
...Appellant

Versus

ASHA RANI & ORS
...Respondents

**FAO No.2334 of 2016 (O&M)**

ASHA RANI & ORS
...Appellants

Versus

RASHPAL KUMAR AND ANR.
...Respondents

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

Present : Mr. Arun Sharma, Advocate and
Mr. Rajat Garg, Advocate for
Mr. T.K. Joshi, Advocate for the Insurance Company.

Mr. R.S. Thakur, Advocate
for the claimants/appellants in FAO No.2334 of 2016.

Mr. Himanshu Monga, Advocate
for respondent No.7 in FAO No.6629 of 2014.

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**<u>REKHA MITTAL, J. (Oral)</u>**

This order will dispose of FAO No.6629 of 2014 and FAO No.2334 of 2016 as these have emerged out of the same award dated

01.04.2014 passed by the Motor Accidents Claims Tribunal, Pathankot whereby compensation has been awarded in regard to death of Balkar Singh in a motor vehicular accident that took place on 21.04.2012.

The Tribunal has awarded compensation of Rs.9,00,000/-, detailed hereunder:-

| | |
|---|---|
| Income of the deceased | Rs.5000/- |
| Deduction for personal expenses | 1/4th |
| Multiplier | 15 |
| Loss of dependency | Rs.5000 x 12 x 15 – 1/4th (thereof) = Rs.6,75,000/- |
| Loss of consortium | Rs.1,00,000/- |
| Loss of love and affection to the claimants | Rs.1,00,000/- |
| Funeral expenses | Rs.25,000/- |
| **Total** | **Rs.9,00,000/-** |

**FAO No.6629 of 2014**

Counsel for the insurance company has informed at the outset that the appeal has been preferred to assail findings of the Tribunal on issue No.3 whereby it has been held that driver of the offending vehicle was holding a valid licence to drive the vehicle in question and the insured is not guilty of committing breach of terms and conditions of contract of insurance. It has been argued that as the vehicle in question was a commercial vehicle and the driver did not possess driving licence with endorsement of transport, he was not competent to drive the vehicle in question, entitling the insurance company to be exonerated of its liability to pay compensation or in the alternative press for right of recovery against the insured after satisfying the award towards the claimants.

Counsel for the respondents, on the contrary, would urge that plea raised by the insurance company is untenable in view of the enunciation laid down by Hon'ble the Apex Court in the latest judgment **Mukund Dewangan vs. Oriental Insurance Company Limited, 2017(7) Scale 731** wherein Hon'ble the Apex Court has held, quoted thus:-

> *"A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, thus "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form."*

Counsel for the insurance company has not disputed that gross weight of the vehicle in question is less than 7500 kgs. and the same falls within the definition of Light Motor Vehicle under Section 2(21) of the Motor Vehicles Act, 1988. That being so, when the present case is examined in the light of ratio laid down in Mukund Dewangan's case (supra), contention raised by the insurance company that driver was not possessing a valid driving licence is misconceived and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

**FAO No.2334 of 2016**

**CM No.8429-CII-2016**

Heard.

For the reasons stated in the application supported by affidavit of Karan, Clerk to Mr. Rajeshwar Singh, Advocate, same is allowed. Delay of 291 days in re-filing the appeal is condoned.

**CM No.8430-CII-2016**

Heard.

For the reasons stated in the application supported by affidavit of Asha Rani, wd/o Balkar Singh, same is allowed. Delay of 232 days in filing the appeal is condoned subject to the condition that the appellants shall forgo interest for the period of delay in case plea for enhancement of compensation is accepted.

**Main Case**

Counsel for the appellants/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 the Constitution Bench of Hon'ble the Apex Court **National Insurance Company Limited Vs. Pranay Sethi and Ors.** Special Leave Petition (Civil) No. 25590 of

2014, decided on 31.10.2017.

Counsel for the insurance company, on the other hand, would urge that compensation awarded under conventional heads needs to be modified in the light of aforesaid judgment of Hon'ble the Supreme Court.

The Tribunal has assessed income of the deceased at Rs.5000/- per month by taking him as a daily wager. The deceased left behind family consisting of his widow, three minor children and parents. He was 38 years old at the time of occurrence. The claimants are entitled to benefit of increase in income for future prospects to the extent of 40%. The deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.5000 x 12 x 15 + 40% (future prospects) – 1/4$^{th}$ (deduction for personal expenses) = Rs.9,45,000/-.

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

| | |
|---|---|
| Loss of consortium to the widow | Rs.40,000/- |
| Funeral expenses | Rs.15,000/- |
| Loss of estate | Rs.15,000/- |
| **Total** | **Rs.70,000/-** |

The total compensation comes to Rs.10,15,000/- and the additional amount is Rs.1,15,000/- (10,15,000 – 9,00,000). The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization except for the period of delay, payable to the widow and children of the deceased in equal ratio. The share of the minor children shall be deposited in FDRs payable on their attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed, in the aforesaid terms.

02.11.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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