IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 14.11.2017

1. **FAO No.4552 of 2016(O&M)**

Ashok Kumar and another …..Appellants

VERSUS

Anil Kumar and others .....Respondents

Present: Mr. R.K. Girdhar, Advocate for the appellants.

Mr. M.K. Pundir, Advocate for respondent No.1.

Mr. R.K. Bashamboo, Advocate for respondent No.5.

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2. **FAO No.4654 of 2016(O&M)**

Ashok Kumar and another …..Appellants

VERSUS

Anil Kumar and others .....Respondents

Present: Mr. R.K. Girdhar, Advocate for the appellants.

Mr. M.K. Pundir, Advocate for respondent No.1.

Mr. R.K. Bashamboo, Advocate for respondent No.5.

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3. **FAO No.4701 of 2016(O&M)**

Anil Kumar and others …..Appellants

VERSUS

Ashok Kumar and others .....Respondents

Present: Mr. M.K. Pundir, Advocate for the appellants.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order shall dispose of FAO Nos.4552, 4654 and 4701 of 2016 as these have emerged out of the same award dated 06.02.2016 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Sunita and Deepanshu and the insurance company has been exonerated of liability to pay compensation.

FAO Nos.4552 and 4654 of 2016 have been filed by the driver and owner/insured of the offending vehicle i.e. Tipper No.PB-12M-9161 and FAO No.4701 of 2016 has been filed by the claimants seeking enhancement of compensation in regard to death of Sunita.

FAO Nos.4552 and 4654 of 2016

Counsel for the appellants has submitted that the Tribunal has exonerated the insurance company of liability to pay compensation on the basis of findings recorded in para 29 of the award to the effect that the offending vehicle was permitted to be plied in the State of Punjab vide permit Ex.R3 whereas the same was being plied in the State of Haryana on the date of accident without holding a valid permit, amounting to violation of the permit condition, thus, liability to pay compensation cannot be fastened upon the insurance company. It is argued with vehemence that admittedly the vehicle was plied on the road with a permit in compliance with the provisions of the Motor Vehicles Act, 1988 (in short 'the Act'). According to counsel, deviation from the route for which the permit has been issued does not constitute violation of the terms and conditions of the contract of insurance nor constitute a defence available to the insurer under Section 149(2) of the Act. In support of his contention, he has relied upon judgments of this Court **Shri Ram General Insurance Company Ltd. Vs. Aarti and others, 2014(1) Law Herald 613, National Insurance Company Ltd. Vs. Rajender Giri and others, 2012(1) PLR 168 and Mangal Vs. Rambhaj and others, FAO No.1972 of 2012 decided on 02.04.2014.**

Counsel representing the insurance company has failed to cite any judgment to the contrary to support findings of the Tribunal that deviation from the route permit either amounts to violation of the terms and conditions of the contract of insurance or constitutes a defence available to the insurer under Section 149(2) of the Act.

In the light of enunciation laid down in the judgments passed by this Court, relied upon by counsel for the appellants, findings recorded by the Tribunal in para 29 of the award by relying upon judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Challa Bharathamma and others, 2005(1) PLR 102** cannot be allowed to sustain and liable to be set aside. The Tribunal has failed to appreciate that controversy before Hon'ble the Supreme Court in **Challa Bharathamma and others' case (supra)** was with regard to permit and not route permit.

For the foregoing reasons, the appeals are allowed. The award passed by the Tribunal is modified to the effect that insurance company is jointly and severally liable to pay compensation to the claimants.

FAO No.4701 of 2016

The Tribunal has awarded compensation to the tune of Rs.8,99,334/- qua death of Sunita, detailed hereunder:-

Monthly income of the deceased (value of her services as a house-maker)	Rs.5212/-

Deduction for personal expenses	1/4th
Multiplier	18
Loss of dependency	Rs.8,44,344/- (Rs.46908 x 18)
Loss of consortium	Rs.20,000/-
Loss of love and affection	Rs.20,000/-
Expenses on funeral	Rs.15000/-

Counsel for the appellants has submitted that as the Tribunal has assessed loss of dependency by taking into consideration value of services of the deceased as a house-maker, deduction for personal expenses is not permissible. In support of his contention, he has referred to the Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh alias Bagga and others, 2014(4) RCR (Civil) 895.** Another submission made by counsel is that the Tribunal has not allowed benefit of increase in income for future prospects to the extent of 40%.

Counsel representing the insurance company, on the contrary, would urge that as the deceased was not gainfully employed, no increase for future prospects can be allowed.

Indisputably, the Tribunal has assessed income of the deceased by treating her as a house-maker. No deduction for personal expenses is admissible in the light of judgment in **Paramjit Singh's case** (supra). Similarly, the claimants shall not be entitled to increase in income for future prospects. In this manner, loss of dependency is calculated at Rs.11,25,792/- (Rs.5212 x 12 x 18).

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

Loss of consortium	Rs.40,000/-
Expenses on funeral/last rites	Rs.15,000/-

In view of the above, total compensation comes to Rs.11,80,792/- and the additional compensation is Rs.2,81,458/- (Rs.11,80,792/- - Rs.8,99,334/-) which shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to Abhishek, minor son of the deceased. The same shall be deposited in a Fixed Deposit Receipt till he attains the age of majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be paid to father of the minor for meeting expenses on his education and living.

The appeal is partly allowed in the aforesaid terms.

NOVEMBER 14, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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