

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

FAO No. 4735 of 2017(O&M)

Date of decision: 25.7.2017

Shri Ram General Insurance Company Ltd.Appellant

VERSUS

Raj Kapoor and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sachin Ohri, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal filed by the insurance company directs challenge against award dated 28.02.2017 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short 'the Tribunal') whereby compensation in regard to death of Smt. Sunil Kumari wife of Sh. Raj Kapoor in a motor vehicular accident that took place on 01.08.2016, has been allowed.

The Tribunal assessed income of the deceased at Rs.6,000/- per month, deducted 1/3rd for personal expenses, allowed benefit of increase in income for future prospects to the extent of 50% and calculated loss of dependency at Rs.12,96,000/-. In addition, compensation has been allowed for loss of consortium, funeral and transportation expenses making it to Rs.14,21,000/-.

Counsel for the appellant has assailed the award primarily on two grounds. The first submission made by counsel is that the Tribunal has wrongly allowed benefit of increase in income for future prospects as the matter is still pending adjudication before a Larger Bench of Hon'ble the

Supreme Court in view of reference made in **National Insurance Company Ltd. vs. Pushpa, SLP (C) No.16735 of 2014, decided on 02.07.2014.** Another submission made by counsel is that as the tractor was attached with a trolley having sand, it amounts to violation of the insurance policy as the driver was not holding a driving licence to drive a transport/commercial vehicle.

I have heard counsel for the appellant and perused the paper-book particularly the award passed by the Tribunal.

Counsel for the appellant has not challenged the findings of the Tribunal whereby income of the deceased has been assessed at Rs.6,000/- per month on the basis of minimum wage prevalent in the area. The Tribunal has also deducted 1/3rd towards personal expenses of the deceased. The mere fact that a reference with regard to grant of future prospects is pending consideration before a Larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of increase in income for future prospects. This apart, the Tribunal has assessed loss of dependency at Rs.6,000/- per month. The accident in question took place on 01.08.2016. The deceased left behind her husband aged 31 years and a minor son aged 2 years in a sudden shock. Assuming that the deceased was a house-maker, value of her services, by no means, can be assessed less than Rs.6,000/- per month. From this point of view as well, no interference in assessment of income of the deceased is warranted, in the given circumstances.

With regard to question of driving licence, the Tribunal on a detailed consideration of the matter in paras 20 to 23 of the award has negated plea of the insurance company that driver of the offending vehicle was not holding a valid driving licence. For this purpose, the Court has

relied upon judgment of Hon'ble the Supreme Court of India **Fahim Ahmad and others Vs. United India Insurance Co. Ltd. and others, 2014(2) RCR (Civil) 470.**

Counsel for the appellant has not advanced any arguments to draw any distinction between the case in hand and aforesaid judgment to contend that ratio laid down in **Fahim Ahmad and others case** (supra) cannot be attracted in the circumstances of the present case. He has failed to point out any materials on record that the tractor in question was being used for commercial purpose.

So far as the plea that a trolley was attached with the tractor, driver possessing a driving licence to drive a light motor vehicle is not rendered incompetent to drive such a vehicle. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Nagashetty Vs. United India Insurance Co. Ltd., 2001(4) RCR (Civil) 597.**

No other point has been raised.

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

JULY 25, 2017

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no