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

FAO No. 5048 of 2017(O&M)

Date of decision: 25.7.2017

IFFCO TOKIO General Insurance Company Ltd. ….Appellant

VERSUS

Rupa Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ajay Singla, Advocate for the appellant.

*****

REKHA MITTAL, J.

CM No.15418-CII of 2017

Prayer in this application is for condoning delay of 25 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Ajay Singla, Advocate, the application is allowed and delay of 25 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.5048 of 2017

The present appeal filed by the insurance company directs challenge against award dated 17.02.2017 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') whereby compensation has been awarded to Rupa Devi and others in regard to death of Sanjeev @ Monu in a motor vehicular accident that took place on 03.01.2015.

Counsel for the appellant has challenged quantum of compensation on the solitary ground that the Tribunal has wrongly extended benefit of increase in income for future prospects despite the fact that the matter is pending consideration before a Larger Bench of Hon'ble the Supreme Court of India 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 Gurdev Singh @ Gagi, driver of the offending vehicle was not holding a valid driving licence, it amounts to breach of the terms and conditions of insurance policy entitling the insurance company to enforce right of recovery against the insured after satisfying the award towards the claimants. To substantiate his contention, it is argued that the licence held by the driver was issued by the licensing authority at Nagaland. The Government of Nagaland notified on 01.08.2014 that all the driving licence holders having the booklet or any other manual formats other than Smart Card must return to the office from where the licence was issued for the purpose of digitizing their data and issue of Smart Card format failing which the driving licenses other than the Smart Card shall be treated as cancelled. It is further argued that the driver or owner of the offending vehicle failed to produce on record a driving licence in Smart Card format, therefore, the driver was not possessing a valid driving licence on the day of accident.

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

The Tribunal has assessed income of the deceased at Rs.8,100/- per month, deducted 1/3rd towards personal and living expenses of the deceased, added 50% on account of future prospects to assess loss of dependency to the tune of Rs.97,200/- per annum.

Hon'ble the Supreme Court in **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** has held that benefit of future prospects to the extent of 50% is available in case the deceased happens to be less than 40 years of age. In the case at hand, the deceased was 26 years old and he left behind his widow, two minor sons aged 4 years and 6 months and parents but father of the deceased died during pendency of the proceedings. It is difficult to accept that the deceased would have stagnated at income of Rs.8,100/- per month, had he remained alive. The mere fact that a reference is pending before a Larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of future prospects in the face of ratio laid down in **Rajesh and others case** (supra).

This brings the Court to the plea regarding driver of the offending vehicle not possessing a valid driving licence at the time of accident. The Tribunal, on a detailed consideration of the document Ex.R8 dated 01.08.2014 issued under the signatures of Transport Commissioner, Nagaland, relevant portion whereof has been reproduced in para 35 of the award, has negated plea of the appellant that the driver was not holding a valid driving licence on the date of accident. Para 37 of the award makes reference that HC Shamsher visited the office of DTO, Nagaland on 09.08.2016, recorded statement of one Kutappe son of Nochhini, now Clerk, DTO, Teunsang, Nagaland to the effect that driving licence Ex.R1 was issued in the name of Gurdev Singh from their office and as per the orders of the Government of Nagaland, all the driving licences in booklet form have been cancelled w.e.f. 01.07.2015. Counsel for the appellant has not disputed the factum of visit of HC Shamsher and recording of statement of one of the officials in the office of DTO, Teunsang, Nagaland. The statement of the concerned official rather substantiates plea of driver of the offending vehicle that he was holding a valid driving licence issued by a competent authority at Nagaland. The mere fact that the driver did not apply for issuance of a licence in Smart Card format is not sufficient to uphold plea of the insurance company that the driver did not possess a valid driving licence to drive the offending vehicle. This apart, as per the orders of the Government of Nagaland, driving licences in booklet form have been cancelled w.e.f. 01.07.2015 but the accident in the present case had taken place in January 2015. Analyzed from any angle, findings recorded by the Tribunal on issue No.3 cannot be faulted with.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in *limine*.

JULY 25, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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