IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision:16.5.2018

1. **FAO No.1804 of 1997(O&M)**

The Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Smt. Krishna Devi and others .....Respondents

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. Vishal Kashyap, AAG, Haryana.

Mr. Raja Sharma, Advocate for
respondents No.1 to 7.

Mr. A.R. Takkar, Advocate
for respondent No.8-HMT Ltd.

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2. **FAO No.2226 of 1997(O&M)**

The Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Santosh Rani and others .....Respondents

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. Vishal Kashyap, AAG, Haryana.

Mr. A.R. Takkar, Advocate
for respondent No.4-HMT Ltd.

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3. **FAO No.2227 of 1997(O&M)**

The Oriental Insurance Co. Ltd …..Appellant

VERSUS

Joginder Pal and others .....Respondents

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. Vishal Kashyap, AAG, Haryana.

Mr. A.R. Takkar, Advocate
for respondent No.4-HMT Ltd.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.1804, 2226 and 2227 of 1997 as these have emerged out of the same award dated 12.04.1997 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby compensation has been awarded on account of death of Wazir Singh and injuries sustained by Santosh Rani and Joginder Pal.

The documents have been supplied by the Haryana Roadways and Hindustan Machine Tools Ltd. in compliance of order dated 14.02.2018, the same are taken on record.

Counsel for the appellant-Oriental Insurance Co. Ltd. (in short 'insurance company') would inform that the appeals have been preferred to assail findings of the Tribunal on issue No.3 i.e. driving licence possessed by driver of bus bearing No.HR-03-5908 of Hindustan Machine Tools Ltd. (in short 'HMT') and quantum of compensation assessed by the Tribunal qua death of Wazir Singh driver of Haryana Roadways Bus bearing No.HR-03-0740. It has been argued that the Tribunal has held drivers of both the buses liable for causing the accident to the extent of 50:50, therefore, the insurance company (appellant herein) with whom bus No.HR-03-5908 of HMT was insured has been held liable to pay compensation to the extent of 50%.

To assail findings of the Tribunal on issue No.3 *"Whether the driver of HMT Pinjore was holding a valid driving licence at the time of* *accident? OPR"* it is argued that as the driver had a licence to drive light motor vehicle but he was driving a heavy transport vehicle with gross vehicle weight of 15244 KGs as recorded in the Registration Certificate, he was not possessing a valid and effective driving licence to drive the vehicle in question. It is further argued that as the driver was not possessing a valid licence to drive a Heavy Transport Vehicle, the insured is guilty of violating the terms and conditions of the insurance policy and the insurer is entitled to be exonerated of liability to pay compensation or in the alternative a right of recovery against the insured after payment of compensation to the claimants.

The Tribunal has assessed compensation of Rs.5,40,000/- with regard to death of Wazir Singh detailed hereunder:-

Monthly income of the deceased	Rs.4500/-
Deduction for personal expenses	1/3rd
Multiplier	15
Loss of dependency	Rs.5,40,000/-

It is argued that as per the information provided by Haryana Roadways, Chandigarh, gross salary of the deceased at the time of death was Rs.2726/- and loss of dependency is liable to be assessed on the said income.

Counsel representing the claimants has supported assessment of income of the deceased by the Tribunal but prayed for enhancement of compensation by allowing benefit of increase qua future prospects and admissible deduction for personal expenses as application for compensation was filed by the widow and six children of deceased Wazir Singh.

Counsel representing HMT Ltd. has supported findings of the Tribunal on issue No.3.

Indisputably, driver of bus belonging to HMT was possessing licence to drive Light Motor Vehicle. As per photocopy of the registration certificate of the vehicle in question made available by counsel representing HMT, the vehicle in question is a Heavy Transport Vehicle with gross vehicle weight 15244 KG. As the driver did not possess a licence to drive a Heavy Transport Vehicle, the insured is guilty of violating the terms and conditions of insurance policy. That being so, the insurance company is entitled to right of recovery against the insured after payment of compensation to the claimants, in terms of the award passed by the Tribunal. In this context reference can be made to judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018 (1) PLR 425**.

Accordingly, findings of the Tribunal on issue no.3 are modified in the aforesaid terms.

This brings the Court to quantum of compensation assessed by the Tribunal qua death of Wazir Singh. The Tribunal has assessed income of the deceased at Rs.4500/- per month on the basis of statement made by Smt. Krishna Devi widow of Wazir Singh. The Tribunal has noticed that there is no rebuttal to the fact that Wazir Singh was drawing salary of Rs.4500/- per month. Counsel for the claimants would inform to the Court that as per his instructions, the claimants have already withdrawn the amount deposited by the insurance company.

There cannot be any dispute about the settled position in law that Tribunal has an obligation to assess just and reasonable compensation which cannot be a bonanza or a source of profit and largesse. The Tribunal failed to appreciate that as the deceased was an employee of Haryana Roadways, it was neither difficult for the claimant to produce evidence with regard to his exact income nor there was difficulty with the Tribunal to call upon the State of Haryana to produce relevant documents with regard to his salary. The work which was required to be done by the Tribunal has been performed by this Court by seeking necessary information from the Haryana Roadways. As per the information supplied, Wazir Singh was drawing salary of Rs.2726.50 per month at the time of death, accordingly his income is assessed at Rs.2730/- per month. The Tribunal has assessed age of the deceased to be 45 years on the basis of postmortem report. As per information received from Haryana Roadways, date of birth of the deceased is 20.12.1952. The deceased was slightly more than 40 years at the time of occurrence, therefore, admissible multiplier would be 15. As the deceased was more than 40 years old, increase in income for future prospects would be @ 30%.

The application for compensation was filed by the widow and six children of the deceased. The admissible deduction for personal expenses would be 1/5th. In this manner, loss of dependency comes to Rs.5,11,056/- [Rs. 4,91,400/- (Rs.2730 x 12 x 15) + Rs.1,47,420/- (30% towards future prospects) – Rs.1,27,764/- (1/5th deduction towards personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.70,000/- detailed hereunder:-

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

In view of the above, total compensation is Rs.5,81,056/- and the additional amount is Rs.41,056/- (Rs.5,81,056/- - Rs.5,40,000/-), payable with interest at the rate of 7.5% per annum from the date of petition till realization to widow of the deceased.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms. All other terms and conditions of the award shall remain intact. No order as to costs.

MAY 16, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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