IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.7.2018

1. **FAO No. 548 of 2004(O&M)**

Ravinder Pal Singh …..Appellant

VERSUS

Saneh Lata and others .....Respondents

Present: Mr. Rajnish Gupta, Advocate for the appellant.

Mr. Vinod K. Kanwal, Advocate for
Mr.Ashit Malik, Advocate respondents No.1 to 3.

Ms. Madhu Sharma, Advocate for respondent No.6.

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2. **FAO No. 274 of 2004(O&M)**

Saneh Lata and others …..Appellants

VERSUS

Tarlochan Singh and others .....Respondents

Present: Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate for the appellants.

Mr. Rajnish Gupta, Advocate for respondent No.2.

Ms. Madhu Sharma, Advocate for respondent No.4.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.548 and 274 of 2004 as these have emerged out of the same award dated 07.10.2003 passed by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal') whereby compensation has been awarded on account of death of Sushil Kumar out of use of truck bearing No.HR51-GA-0051 in an accident that occurred in July 1999 but the insurance company has been exonerated on the premise that policy Ex.RX has not been issued by the insurance company.

FAO No.274 of 2004 has been filed by the claimants whereas the other appeal has been preferred by Ravinder Pal Singh one of the owners of offending vehicle to assail findings of the Tribunal in regard to the policy in question.

FAO No.274 of 2004

Counsel for the claimants would urge that the Tribunal has assessed income of the deceased at Rs.2100/- per month as against deposition of Satpal Singh, driver of the truck in question who deposed that Sushil Kumar was engaged as a Cleaner on the truck at salary of Rs.2400/- per month. In addition, it is argued that the deceased was 19 years old at the time of occurrence but the Tribunal has applied multiplier of 15 and an appropriate multiplier may be allowed in the light of Second Schedule appended to Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act').

The plea of the claimants with regard to income of the deceased to be Rs.2400/- per month on the basis of statement of driver of the vehicle is not meritorious. The claimants, for the reasons best known, did not examine owner of the truck to prove that the deceased was being paid Rs.2400/- per month. The minimum wage in July 1999 was far below Rs.2100/- per month. In this view of the matter, I do not find any justification for increase in income of the deceased.

The deceased was 19 years old son of Smt. Sneh Lata. As per Second Schedule, a multiplier of 16 is admissible for age group above 15 years and not exceeding 20 years. Accordingly, loss of dependency is calculated at Rs.2,68,800/- [Rs.4,03,200/- (Rs.2100/- x 12 x 16) – Rs.1,34,400/- (1/3rd deduction towards personal expenses)].

Compensation under conventional heads awarded by the Tribunal is correct and affirmed.

In view of the above, total compensation comes to Rs.2,73,300/- and the additional amount is Rs.16,800/- (Rs.2,73,300/- - Rs.2,56,500/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO No.548 of 2004

Counsel for the appellant would argue that the insurance company did not raise a plea in the written statement that the vehicle in question was not insured at the relevant time. It is further submitted that the appellant has filed an application i.e. CM No.1752-CII of 2004 under Order 41 Rule 27 read with Section 151 CPC seeking permission to place on record cover note qua vehicle bearing No.DL-1G-0151 issued on 21.09.1999 by way of additional evidence. It is further submitted that as the insurance company did not raise a plea that either the vehicle in question was not insured much less that the policy is fake/forged one, the insured is deprived of an opportunity to adduce evidence to prove the cover note and insurance policy, in accordance with law. He has prayed that findings recorded by the Tribunal with regard to correctness or otherwise of the policy may be set aside and the matter be remitted to the Tribunal for deciding that issue afresh on the basis of materials already on record and evidence to be adduced by the appellant.

Counsel for the insurance company has got no objection if the matter is remitted to the Tribunal for adjudication afresh but the insurance company shall be entitled to an opportunity to adduce further evidence after evidence is led by the appellant qua cover note sought to be produced by way of additional evidence as well as in regard to policy Ex.RX.

In view of the above, in the interest of substantial justice, findings of the Tribunal qua policy Ex.RX are set aside and the matter is remitted to the Tribunal for adjudication afresh. The appellant shall be entitled to lead evidence with regard to cover note sought to be produced by way of additional evidence as well as in regard to policy Ex.RX, by getting two effective opportunities for the purpose. The insurance company shall be at liberty to lead further evidence after evidence is adduced by the appellant. The Tribunal shall decide the question of validity of the policy in question, on the basis of materials already on record as well as additional evidence to be adduced by the parties.

The appeal stands disposed of accordingly.

The parties through their counsel are directed to appear before the Tribunal on 17.08.2018. The Tribunal shall decide the aforesaid issue within a period of 4 months of the parties putting in appearance.

JULY 19, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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