IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 25.10.2018

FAO No.1899 of 2009 (O&M)

Smt. Ranjana Sharma and another ... Appellants

Versus

Khem Raj and others ... Respondents

FAO No.1771 of 2009 (O&M)

United India Insurance Co. Ltd. ... Appellant

Versus

Smt. Ranjana Sharma and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rakesh Lathwal, Advocate
for the claimants.

Mr. Gopal Mittal, Advocate
for the insurance company.

Mr. Rajinder Sharma, Advocate
for the owner and driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1771 and 1899 of 2009 as these have emerged out of award dated 30.01.2009 passed by the Motor Accidents Claims Tribunal, Sonepat whereby compensation has been assessed on account of death of Vinit Mohan Sharma in a motor vehicular accident that took place on 09.04.2006.

FAO No.1899 of 2009 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been preferred by the insurance company.

FAO No.1899 of 2009

The Tribunal has awarded compensation of Rs.8,42,048/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.8500/-
2. Multiplier	12
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.8,16,048/-
5. Expenses on transportation, funeral and last rites	Rs.10,000/-
6. Loss of compensation to the spouse	Rs.5000/-
7. Medical expenses	Rs.11,000/-

Counsel for the claimants would urge that adequate compensation may be allowed by extending benefit of addition in income for future prospects and appropriate compensation under conventional heads.

Counsel representing the insurance company, on the contrary, would argue that the Tribunal has wrongly assessed income of the deceased at Rs.8500/- per month as against annual income of Rs.78,300/- reflected in Form No.16 Ex.P2 and copy of Saral Form No.2D Ex.P3.

As per plea of the claimants, deceased was working as Production Manager, Gane Laboratories Ltd., Badli Industrial Area, Badli at salary of Rs.20,000/- per month. They examined Saurabh Bhargav PW2 to prove salary slip Ex.P4. Testimony of Saurabh Bhargav with regard to employment and income of the deceased does not find corroboration from any other documentary evidence maintained by Gane Laboratories Ltd. In the given scenario, the Tribunal has rightly refused to rely upon salary slip Ex.P4 and testimony of Saurabh Bhargav PW2 with regard to income of the deceased. As has been rightly argued by counsel for the insurance company, income of the deceased is liable to be assessed on the basis of documents Exs.P2 and P3, taken note of by the Tribunal in para 28 of the award. Accordingly, annual income of the deceased is assessed at Rs.78,300/-. Claimants shall be entitle to addition in income for future prospects @40%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed. However, as the deceased was in the age bracket of 36 to 40 years, admissible multiplier would be 15. In this manner, loss of dependency is calculated at Rs.10,96,200/- [(78,300 x 15) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.1,10,000/-, detailed hereunder:-

1. Loss of consortium to both the claimants	Rs.80,000/- (Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

The amount of Rs.11,000/- allowed by the Tribunal towards medical expenses is affirmed. In view of the above, total compensation is

Rs.12,17,200/- and the additional amount is Rs.3,75,152/- (12,17,200 - 8,42,048), payable with interest @7.5% per annum from the date of petition till realization, in terms of the award.

The appeal is partly allowed in the aforesaid terms.

FAO No.1771 of 2009

Counsel for the insurance company would fairly inform that the appeal has been preferred to assail quantum of compensation and findings of the Tribunal on issue No.3.

So far as contention of the insurance company with regard to quantum of compensation is concerned, the same has already been dealt with while deciding FAO No.1899 of 2009 filed by the claimants seeking enhancement of compensation.

With regard to driving licence, it is argued that as it has been established that endorsement of transport vehicle is fake, Khem Raj was not competent to drive bus No.HP-15-2125, a transport vehicle. It is argued that as Khem Raj was not possessing a licence authorising him to drive a transport vehicle, the insured is guilty of violating the terms and conditions of insurance policy entitling the insurance company to press for right of recovery against the insured after payment of compensation to the claimants.

Another submission made by counsel is that insured-respondent No.4 cannot derive any advantage to its contention from testimony of Amar Singh, Managing Director of M/s Minhaz Associates

Pvt. Ltd as no such plea has been raised in the reply/written statement that driving licence possessed by Khem Raj was seen at the time when he was engaged as a driver on the bus in question.

Counsel representing respondents No.3 and 4, on the contrary, would urge that when testimony of Amar Singh RW5 is examined in the light of enunciation laid down by Hon'ble the Supreme Court in **United India Insurance Co. Ltd. Vs. Lehru, 2003(2) RCR (Civil) 278** and **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273**, plea of the insurance company that the insured is guilty of breaching the terms and conditions of insurance policy is not meritorious and has rightly been rejected by the Tribunal.

Be that as it may, it is undisputed position of the case that endorsement on licence possessed by the driver authorising him to drive a transport vehicle is found to be fake. However, the Tribunal in para 22 of the award has noticed that Amar Singh RW5, Managing Director of M/s Minhaz Associates Pvt. Ltd stated that respondent No.1 had been working with the said company since 2000 and before giving him appointment as driver, his driving licence was duly examined and verified. As records have burnt in a fire incident, counsel for the parties have expressed their inability to make available a copy of testimony of Amar Singh RW5 for appreciation. However, keeping in view the gist of testimony of Amar Singh RW5 recorded by the Tribunal in para 22 of the award, it is difficult to accept contention of the insurance company that the insured is guilty of violating the terms and conditions of policy when the case is examined in the light of ratio laid down in **Pepsu Road Transport Corporation's case (supra)**. In this view of the matter, contention of the insurance company that it can either escape liability to pay compensation or can press for right of recovery against the insured is not meritorious and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

25.10.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No