IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

<u>Date of decision:20.7.2018</u>

1. **<u>FAO No.3356 of 2011(O&M)</u>**

New India Assurance Co. Ltd. …..Appellant

VERSUS

Krishna Devi and others .....Respondents

Present: Mr. R.K. Bashamboo, Advocate for the appellant.

Mr. Ashish Gupta, Advocate for respondents No.1 to 6.

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2. **<u>FAO No.4210 of 2011(O&M)</u>**

Smt. Krishna Devi and others …..Appellants

VERSUS

Daya Singh and others .....Respondents

Present: Mr. Ashish Gupta, Advocate for the appellants.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

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<u>CORAM</u>: <u>HON'BLE MRS. JUSTICE REKHA MITTAL</u>

<u>REKHA MITTAL, J.</u>

This order will dispose of FAO Nos.3356 and 4210 of 2011 as these have emerged out of the same award dated 15.01.2011 passed by the Motor Accidents Claims Tribunal, Sonepat (in short 'the Tribunal') whereby compensation has been awarded on account of death of Hawa Singh out of use of tractor trolley No.HR10-E-4846.

FAO No.3356 of 2011 has been filed by the insurance company whereas FAO No.4210 of 2011 has been filed by the claimants seeking enhancement of compensation.

FAO No.3356 of 2011

The sole submission made by counsel for the insurance company is that as the deceased sustained injuries while punctured wheel of the trolley was being replaced by fixing jack under the trolley, that got slipped from the jack and fell down on the deceased, the insurance company is not liable to pay compensation for want of any role attributed to the tractor in causing injuries to the deceased. It is further argued that the insured did not pay premium for insuring the trolley/trailor, therefore, the insurance company has wrongly been fastened with liability to pay compensation. In support of his contention, he has relied upon judgment of this Court **Jai Bhagwan and another Vs. Koshalya and others, FAO No.660 of 2010, decided on 29.04.2014**.

Counsel representing the claimants has supported findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation. In support of his contention, he has relied upon Division Bench judgment of this Court **United India Insurance Co. Ltd. Vs. Pritpal Singh and others, 1996(2) PLR 49**. Further reference has been made to Division Bench judgment of Chhattisgarh High Court **Pradeep Sharma Vs. Rajkumar Singh and another, 2013 ACJ 1561** and Single Bench judgment of Delhi High Court **New India Assurance Co. Ltd. Vs. Sanjay Tyagi and others, 2015 ACJ 787**.

The insurance policy obtained by Sh. Chand Ram, owner of tractor bearing No.HR10E-4846 is a standard Commercial Vehicle Package Policy on payment of third party premium of Rs.925/- plus Own Damage. Once the policy is a Commercial Vehicle Package Policy and the tractor cannot be used as a commercial vehicle unless a trolley/trailor is attached thereto, it is difficult to accept contention of the insurance company that the insurer is not liable to pay compensation since Hawa Singh (deceased) sustained injuries only because of the trolley having slipped from the jack. In this view of the matter, the insurance company cannot derive any advantage to its contention from the judgment in **Jai Bhagwan and another's case** (supra). Accordingly, findings recorded by the Tribunal holding the insurance company liable to pay compensation are liable to be affirmed.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed. No order as to costs.

FAO No.4210 of 2011

The claimants have been awarded compensation of Rs.3,00,000/- detailed in para 19 of the award.

The sole submission made by counsel for the claimants is that the Tribunal has applied multiplier of 11 which is not in consonance with the multiplier available under the Second Schedule appended to Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act').

Counsel for the insurance company has supported assessment of compensation by the Tribunal.

The Tribunal in para 19 has noticed that as per PMR Ex.R1, death certificate Ex.P2, the deceased was 50 years old. There is no challenge to these factual findings recorded by the Tribunal. According to Second Schedule, a multiplier of 13 is to be applied in case age of the victim is above 45 years but not exceeding 50 years. As in the case at hand, the deceased was not above 50 years of age, admissible multiplier would be 13. Accordingly, loss of dependency is calculated at Rs.3,32,800/- (Rs.25,600/- x 13). The additional amount of Rs.51,200/- (Rs.3,32,800/- - Rs.2,81,600/-) shall be 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 appeal is partly allowed in the aforesaid terms.

JULY 20, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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