IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.713 of 2011(O&M) &

XOBJC-20-CII of 2013

Date of decision: 6.7.2018

Sagar Ram …..Appellant

VERSUS

Mukesh Kumar and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.S. Khurana, Advocate for the appellant.

Mrs. Pratibha Yadav, Advocate for respondent No.1 and 2/cross objectors.

Ms. Vandana Malhotra, Advocate for respondent No.3.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.713 of 2011 and cross objections No.20-CII of 2013 as these have emerged out of the same award dated 03.05.2010 passed by the Motor Accidents Claims Tribunal, Rewari (in short 'the Tribunal') whereby compensation has been awarded on account of death of Babu Lal in a motor vehicular accident that took place on 14.07.2009.

The Tribunal has assessed compensation of Rs.2,88,000/- detailed hereunder:-

Monthly loss of dependency	Rs.1500/-
Multiplier	16

Loss of dependency	Rs.2,88,000/-

However, claimant has been held entitled to 50% of compensation from the driver, owner and insurer of offending truck bearing No.RJ32-G-2584 and the claimant has been left at liberty to initiate separate proceedings against the driver, owner and insurer of truck No.HR-14-E-3344 for recovery of remaining 50% of compensation as the Tribunal has attributed 50% negligence to each of the drivers of two trucks involved in the occurrence.

Counsel for the appellant would urge that the deceased was working as Conductor on truck No.HR-14-E-3344 and his income may be assessed accordingly. Claimant is entitled to addition in income for future prospects and appropriate multiplier on the basis of age of the deceased plus adequate compensation under conventional heads. It is further argued that even if drivers of both the vehicles involved in the occurrence were held liable for the accident to the extent of 50% each, claimant is at liberty in law to seek compensation from either of the joint tortfeasors, therefore, claimant is entitled to entire compensation from the driver, owner and insurer of offending vehicle No.RJ-32-G-2584.

Counsel representing the cross objectors has assailed findings of the Tribunal whereby the insured has been held guilty of violating the terms and conditions of the insurance on the basis whereof the insurance company has been given right of recovery.

Counsel representing the insurance company has supported findings of the Tribunal both on the question of quantum of compensation as well as recovery right given to the insurer after payment of compensation to the claimants. In addition, it is submitted that in case the driver, owner and insurer of vehicle No.RJ32-G-2584 are held liable to pay entire compensation, the insurance company may be left at liberty to seek recovery from the driver, owner and insurer of truck No.HR-14-E-3344 qua 50% of the amount in regard whereof, contributory negligence has been attributed to the driver of said vehicle.

I have heard counsel for the parties, perused the paper-book and records.

Indisputably, deceased was travelling in ill-fated truck No.HR-14-E-3344 as he was working as a Conductor with the said truck. Taking into consideration the minimum wage of a semi skilled worker available at the relevant time, income of the deceased is assessed at Rs.4050/- per month. The application for compensation has been filed by father of the deceased, therefore, admissible deduction for personal expenses would be 50%. Claimant shall be entitled to addition in income for future prospects at the rate of 40%. As the deceased was less than 20 years of age, appropriate multiplier is 18 when examined in the light of judgments of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77; Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447** and **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.** In this manner, loss of dependency comes to Rs.6,12,360/- [Rs.8,74,800/- (Rs.4050/- x 12 x 18)

+ Rs.3,49,920/- (40% towards future prospects) – Rs.6,12,360/- (50% deduction towards personal expenses)].

Under conventional heads, claimant shall be entitled to an amount of Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss of estate.

In view of the above, total compensation comes to Rs.6,42,360/- and additional amount is Rs.3,54,360/- (Rs.6,42,360/- - Rs.2,88,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization.

Perusal of the award leaves no manner of doubt that no negligence in causing the accident has been attributed to the deceased. Conversely, composite negligence has been attributed to the drivers of two trucks aforesaid involved in the occurrence. As has been rightly argued by counsel for the claimant, he is entitled to get compensation from either of the joint tortfeasors. That being so, findings of the Tribunal that claimant shall be entitled to only 50% of the amount and with regard to the remaining 50% he has to initiate proceedings against the driver, owner and insurer of truck No.HR14-E-3344 are against law and cannot be allowed to sustain. As such, claimant shall be entitled to recover the entire compensation from the driver, owner and insurer of truck No.RJ-32-G-2584.

This brings the Court to the issue of recovery right given to the insurance company against the driver and owner of truck No.RJ-32-J-2584. There cannot be any dispute about the settled position in law that deviation from the permitted route cannot constitute defence in favour of insurer under Section 149(2) of the Motor Vehicles Act, 1988 to contend that the insured is guilty of violating the terms and conditions of insurance or the insurance company is entitled to right of recovery against the insured after payment to the claimant. This apart, Tribunal has allowed recovery rights both against the driver and owner of the offending vehicle without correctly appreciating that in absence of any privity of contract between the driver and insurance company, the insurer cannot press for right of recovery against the driver as well. In this view of the matter, findings of the Tribunal giving recovery right in favour of the insurance company are set aside.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. Similarly, cross objections are allowed. However, the insurance company of truck No.RJ-32-J-2584 shall be at liberty to avail remedy in law to recover 50% of the amount from driver, owner and insurer of truck No.HR14-E-3344, in regard to negligence attributed to its driver. The parties are left to bear their own costs.

JULY 6, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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