IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 07.12.2018

FAO No.831 of 2011 (O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Sharbati Devi and others ... Respondents

FAO No.4842 of 2011 (O&M)

Sharbati Devi and others ... Appellants

Versus

Dharam Pal and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Talwar, Advocate with
Mr. J.S. Chatrath, Advocate
for the insurance company.

Ms. Kiranjeet Kaur, Advocate for
Mr. Ravinder Malik, Advocate
for the claimants.

Mr. Satnam S. Thakur, Advocate
for the owner and driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.831 and 4842 of 2011 as these have emerged out of the same award dated 20.10.2010 passed by the

Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri whereby compensation has been awarded on account of death of Ami Lal in a motor vehicular accident that took place on 08.03.2009.

FAO No.831 of 2011 has been filed by Oriental Insurance Company Ltd. whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

FAO No.831 of 2011

The sole submission made by counsel for the appellant-insurance company is that as only trolley hit the deceased which was not insured vide policy issued by the appellant-insurance company, the insurance company has wrongly been fastened with liability to pay compensation.

Counsel representing the insured has supported findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation by way of indemnification of the insured who had obtained the policy for insuring tractor bearing chassis No.T2103541 engine No.2106070 make Farmtrac 45 blue colour.

The plea of claimants is that on the fateful day of 08.03.2009, Ami Lal, driver of tractor Swaraj 35 had gone to Som Nadi in the area of Ranjitpur to load sand. Dharampal respondent No.1 before the Tribunal was already there with offending vehicle. The deceased was sitting and waiting for his turn to load sand. Respondent No.1, all of a sudden, started his tractor trolley in a rash and negligent manner by putting reverse gear and ran over the deceased. As the trolley was attached with the tractor and did not move independently except because of the tractor being brought in motion by driver of offending vehicle, it is difficult to accept contention of the insurance company that the insurer is not liable to pay compensation merely because the trolley attached with the tractor was not insured. The matter would have been different, had the trolley been not attached with the tractor and the occurrence had been caused because of trolley alone hitting the deceased. In this view of the matter, contention raised by the insurance company is patently misconceived and accordingly rejected.

No other point has been raised.

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

FAO No.4842 of 2011

The Tribunal has awarded compensation of Rs.5,77,112/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5000/-
2. Multiplier	14
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.5,60,112/-
5. Expenses on last rites and transportation	Rs.7000/-
6. Loss of consortium	Rs.10,000/-

Claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,00,000/- [(5000 x 12 x 14) + (25% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.1,50,000/-, detailed hereunder:-

1. Loss of consortium to claimants No.1 to 3	Rs.1,20,000/- (Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

Total compensation is Rs.8,50,000/- and the additional amount is Rs.2,72,888/- (8,50,000 - 5,77,112), payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the claimants in equal ratio. The amount falling to share of minors shall be invested in fixed deposit payable on their attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

07.12.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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