**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Date of decision: 17.04.2018**

**FAO No.5468 of 2012 (O&M)**

UNITED INDIA INSURANCE CO LTD ... Appellant

Versus

LAXMI DEVI & ORS ... Respondents

**FAO No.5469 of 2012 (O&M)**

UNITED INDIA INSURANCE CO LTD ... Appellant

Versus

KELA DEVI AND ORS ... Respondents

**FAO No.5470 of 2012 (O&M)**

UNITED INDIA INSURANCE CO LTD ... Appellant

Versus

VARSHA AND ORS. ... Respondents

**FAO No.5471 of 2012 (O&M)**

UNITED INDIA INSURANCE CO LTD ... Appellant

Versus

RAM KUMAR AND ORS ... Respondents

**FAO No.5472 of 2012 (O&M)**

UNITED INDIA INSURANCE CO LTD ... Appellant

Versus

USHA RANI AND ORS ... Respondents

**FAO No.4799 of 2014 (O&M)**

UNITED INDIA INSURANCE CO LTD ... Appellant

Versus

PREMO DEVI AND ANR ... Respondents

**FAO No.4412 of 2013 (O&M)**

USHA RANI AND ORS ... Appellants

Versus

MAHAJAN SINGH AND ANR ... Respondents

**FAO No.4644 of 2014 (O&M)**

PREMO DEVI ... Appellant

Versus

MAHAJAN SINGH AND ANR ... Respondents

**FAO No.437 of 2014 (O&M)**

KELA DEVI AND ORS ... Appellants

Versus

MAHAJAN SINGH AND ANR ... Respondents

**FAO No.436 of 2014 (O&M)**

LAXMI DEVI AND ANR ... Appellants

Versus

MAHAJAN SINGH AND ANR ... Respondents

**FAO No.428 of 2014 (O&M)**

RAM KUMAR AND ANR ... Appellants

Versus

MAHAJAN SINGH AND ANR ... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. V. Ramswaroop, Advocate
for the insurance company.

Mr. Kulwinder Singh, Advocate for
Mr. Rajbir Singh, Advocate
for the appellant(s) in FAO Nos.428, 436 and 437 of 2014.

Mr. Prem Chand Chaudhary, Advocate
for the appellant(s) in FAO No.4412 of 2013 and
for respondents No.1 to 3 in FAO No.5472 of 2012.

Mr. Bahadur Singh, Advocate
for the appellant(s) in FAO No.4644 of 2014 and
for respondent No.1 in FAO No.4799 of 2014.

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**REKHA MITTAL, J. (Oral)**

This order will dispose of FAO Nos.5468 to 5472 of 2012, 4412 of 2013, 428, 436, 437, 4644 and 4799 of 2014 as these have emerged out of the same award dated 19.07.2012 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar whereby compensation has been awarded on account of death of Ashok Kumar, Barhm Dutt, Sant Ram, Sunny, Naresh Kumar @ Sanju, Naresh Kumar son of Som Nath and Pardeep in a motor vehicular accident that took place on 03.07.2009 when bus bearing No.HP-68-0946 carrying large number of pilgrims from Uttarkashi to Gangotri unfortunately fell in the river Ganges due to high speed and negligent driving of bus driver who also died in the occurrence.

FAO No.5468 to 5472 of 2012 and 4799 of 2014 have been filed by the United India Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas the other appeals have been filed by the claimant(s) seeking enhancement of compensation in regard to deaths of Barhm Dutt, Sant Ram, Sunny, Naresh Kumar son of Som Parkash @ Som Dutt and Pardeep.

**FAO No.428 of 2014**

With regard to death of Sant Ram, the Tribunal has awarded compensation of Rs.4,26,000/-, detailed hereunder:-

| | |
|---|---|
| 1. Monthly income of the deceased | Rs.4000/- |
| 2. Multiplier | 13 |
| 3. Deduction for personal expenses | 1/3$^{rd}$ |
| 4. Loss of dependency | Rs.4,16,000/- |
| 5. Expenses on last rites | Rs.10,000/- |

Counsel for the claimants has prayed for enhancement of compensation primarily on the ground that the Tribunal has not allowed benefit of increase in income for future prospects nor allowed adequate compensation under conventional heads.

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

The deceased was held to be 46 years of age. Claimants shall be entitled to benefit of future prospects @ 25%. The multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.5,20,000/- (Rs.4000 x 12 x 13) + (25% future prospects) – (1/3$^{rd}$ deduction for personal expenses).

Under conventional heads, the Tribunal has awarded a sum of Rs.10,000/- for performance of last rites. The occurrence in question took place when the ill-fated bus carrying passengers more than 60 fell into river Ganges. Indisputably, dead body of Sant Ram could not be retrieved. Therefore, claimants are not entitled to any compensation qua expenses on funeral. However, claimants shall be entitled to an amount of Rs.15,000/- qua loss to estate.

Total compensation is Rs.5,35,000/- and the additional amount is Rs.1,09,000/- (5,35,000 – 4,26,000), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay i.e. 82 days.

The appeal is partly allowed in the aforesaid terms.

**FAO No.436 of 2014**

The Tribunal has awarded compensation of Rs.3,75,000/- on account of death of Naresh Kumar payable to Laxmi Devi, mother of the deceased, detailed hereunder:-

| | |
|---|---|
| 1. Monthly income of the deceased | Rs.4000/- |
| 2. Multiplier | 15 |
| 3. Deduction for personal expenses | 50% |
| 4. Loss of dependency | Rs.3,60,000/- |
| 5. Expenses on last rites | Rs.10,000/- |
| 6. Loss of love and affection | Rs.5000/- |

Counsel for the claimants has prayed for enhancement of compensation by contending that they are entitled to benefit of future prospects @ 40% as the deceased was 25 years old. Admissible multiplier should be 18 on the basis of age of the deceased. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported assessment made by the Tribunal.

Plea of the claimants for extending benefit of increase in income for future prospects @ 40% is meritorious in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. As the deceased was 25 years old, admissible multiplier is 18. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315, Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** and **Pranay Sethi's case** (supra). Deduction for personal expenses allowed by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.6,04,800/- (Rs.4000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

As dead body of Naresh Kumar could not be retrieved, claimants are not entitled to any compensation qua expenses on funeral. However, they are awarded an amount of Rs.15,000/- qua loss to estate. Total compensation is Rs.6,19,800/- and the additional amount is Rs.2,44,800/- (6,19,800 - 3,75,000), payable with interest @7.5% per annum from the date of petition till realization except for the period of delay i.e. 79 days, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

**FAO No.437 of 2014**

The Tribunal has awarded compensation of Rs.5,19,000/- qua death of Barhm Dutt, detailed hereunder:-

| | |
|---|---|
| 1. Monthly income of the deceased | Rs.4000/- |
| 2. Multiplier | 14 |
| 3. Deduction for personal expenses | 1/4$^{th}$ |
| 4. Loss of dependency | Rs.5,04,000/- |
| 5. Expenses on last rites | Rs.10,000/- |
| 6. Loss of consortium | Rs.5000/- |

The Tribunal has not allowed benefit of increase in income for future prospects and the same is allowed @ 25%. Income of the deceased, deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.6,30,000/- (Rs.4000 x 12 x 14) + (25% future prospects) – (1/4$^{th}$ deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

| | |
|---|---|
| 1. Loss of consortium | Rs.40,000/- |
| 2. Loss of estate | Rs.15,000/- |
| 3. Funeral expenses | Rs.15,000/- |

Total compensation is Rs.7,00,000/- and the additional amount is Rs.1,81,000/- (7,00,000 – 5,19,000), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay i.e. 82 days, to be apportioned in terms of the award passed by the

Tribunal.

The appeal is partly allowed in the aforesaid terms.

**<u>FAO No.4644 of 2014</u>**

A sum of Rs.1,74,388/- (rounded of to Rs.1,74,400/-) has been awarded in regard to death of Pardeep, detailed hereunder:-

| | |
|---|---|
| 1. Monthly income of the deceased | Rs.3914/- |
| 2. Multiplier | 7 |
| 3. Deduction for personal expenses | 50% |
| 4. Loss of dependency | Rs.1,64,388/- |
| 5. Funeral expenses and transportation charges | Rs.10,000/- |

Counsel for the claimant would pray for enhancement of compensation on the premise that the Tribunal has not allowed benefit of future prospects. Appropriate multiplier may be applied in the light of judgment of Hon'ble the Supreme Court in **Sarla Verma's case** (supra). Adequate compensation may be allowed under conventional heads.

As the deceased was 25 years old, claimant shall be entitled to benefit of future prospects @ 40%. The Tribunal has applied multiplier of 7 on the basis of age of mother of the deceased in place of appropriate multiplier on the basis of age of the deceased. When the case is examined in the light of enunciation laid down by Hon'ble the Apex Court in **Sarla Verma's case (supra), Munna Lal Jain's case (supra)** and **Pranay Sethi's case (supra)**, admissible multiplier is 18. Deduction for personal expenses allowed by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.5,91,796/- (Rs.3914 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

As dead body of deceased Pardeep could not be retrieved, claimant is not entitled to compensation qua funeral expenses/transportation etc. She is awarded an amount of Rs.15,000/- for loss to estate. In this manner, total compensation is Rs.6,06,796/- and the additional amount is Rs.4,32,396/- (6,06,796 – 1,74,400), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

**FAO No.4412 of 2013**

With regard to claim preferred by Usha Rani and others qua death of Sunny, the Tribunal has awarded compensation of Rs.3,51,000/- to mother of the deceased, detailed hereunder:-

| | |
|---|---|
| 1. Monthly income of the deceased | Rs.4000/- |
| 2. Multiplier | 14 |
| 3. Deduction for personal expenses | 50% |
| 4. Loss of dependency | Rs.3,36,000/- |
| 5. Expenses on last rites | Rs.10,000/- |
| 6. Loss of love and affection | Rs.5000/- |

The Tribunal has not allowed benefit of increase in income for future prospects as the deceased was 20 years old; claimants shall be entitled to benefit of future prospects @ 40%. The Tribunal has applied multiplier of 14 on the basis of age of the mother of the deceased. In view of observations recorded in FAO No.4644 of 2014, admissible multiplier would be 18. Deduction for personal expenses allowed by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.6,04,800/-

(Rs.4000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

The Tribunal has awarded a sum of Rs.10,000/- for expenses on last rites. As dead body of Sunny could not be retrieved, claimants are not entitled to compensation for last rites. However, claimants are awarded Rs.15,000/- for loss to estate. Total compensation is Rs.6,19,800/- and the additional amount is Rs.2,68,800/- (6,19,800 – 3,51,000), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay i.e. 215 days, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

**FAO Nos.5468 to 5472 and 4799 of 2014**

Counsel for the insurance company would urge that the appeals have been preferred to challenge the award primarily on two counts. It is argued that sitting capacity of the bus in question was 44 but the bus had been carrying more than 60 people, therefore, the insured is guilty of violating the terms and conditions of insurance policy and the insurance company cannot be fastened with liability to pay compensation by way of indemnification of the insured. The second submission made by counsel is that as the bus did not possess route permit to ply it in the State of Uttarakhand where the occurrence in question took place, the insurance company is entitled to be exonerated of liability to pay compensation.

Counsel representing claimants in the aforesaid appeals filed for enhancement have supported findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation by way of indemnification of the insured in discharge of obligation under the contract of insurance. It is argued with vehemence that there is nothing on record suggestive of the fact that more persons than sitting capacity of the bus were travelling in the ill-fated vehicle or the same has contributed in any manner for the occurrence. Non-possessing of route permit does not constitute a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (for short 'the Act').

I have heard counsel for the parties, perused the paper books and records of the Tribunal.

Indisputably, occurrence in question took place when the ill-fated bus bearing No.HP-68-0946 was on its way from Uttarkashi to Gangotri which was driven by Paan Singh, a victim of the accident. It has been established before the Tribunal that accident took place due to high speed and negligent driving of the bus by its driver who could not control the bus that went off the road and fell in river Bagirathi (Ganges). If persons more than sitting capacity of the bus had claimed compensation either qua death or injuries, the insurance company, at best, can pray for limiting its liability to pay compensation only to the extent of passengers which could be carried in the bus in question. However, there is nothing on record suggestive of the fact that more than 44 persons have made claim for grant of compensation either qua death or injuries. In this view of the matter, the insurance company cannot derive any advantage to its contention merely because the bus was carrying passengers more than its permitted capacity particularly in the circumstances that there is nothing on record suggestive of the fact that carrying of more passengers has, in any manner, attributed to the accident.

This brings the Court to the question of violation of terms and conditions of the policy. Counsel for the insurance company has failed to point out any such terms and conditions in the policy with regard to route permit much less non-possessing of a route permit or deviation therefrom constituting a defence in favour of the insurer under Section 149(2) of the Act. In this view of the matter, contention raised by counsel for the insurance company in this regard is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeals filed by the insurance company fail and are accordingly dismissed.

No order as to costs.

17.04.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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