IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

314/R **Date of Decision: 12.07.2018**

1. FAO NO.1009 OF 2013(O&M)

Reliance General Insurance Co. Ltd .... Appellant

versus

Smt. Suman and others .... Respondents

2. FAO No.1533 OF 2014(O&M)

Suman and others .... Appellants

versus

Ram Kumar and others .... Respondents

3. FAO No.2393 of 2013(O&M)

Ram Kumar and another .... Appellants

versus

Suman and others .... Respondents

CORAM HON'BLE MR. JUSTICE AJAY TEWARI

Present Mr.Manish Soni, Advocate for the appellants
in FAO-2393-2013, respondents no.1 and 2 in FAO-1533-2014
and for respondents no.5 and 6 in FAO-1009-2013.
Mr. Paras Money Goyal, Advocate for
Mr. Subhash Goyal, Advocate for the appellant
in FAO-1009-2013, respondent no.5 in FAO-2393-2013
and respondent no.3 in FAO-1533-2014.
Mr. Abhimanvu Kalsy. Advocate for
Mr. Rakesh Dhiman,, Advocate for appellants in
FAO-1533-2014 and for respondents no.1 to 4 in
FAO-1009-2013.

AJAY TEWARI, J(ORAL)

CM No.5220-CII-2014 in FAO-1533-2014

Delay of 364 days in filing the appeal is condoned.

Main Cases

These three appeals filed against the award dated 31.10.2012 passed by Motor Accident Claims Tribunal, Gurgaon, are being decided by this common judgment.

The brief facts are that on 20.08.2011, deceased was returning to his home from Gurgaon on his scooty at a moderate speed on his correct left hand side, when the offending vehicle truck No. HR-69-2990 being driven at a high speed in a rash and negligent manner came from Jaipur side and hit the scooty, as a result of which, the death occurred. At that time, the deceased was aged about 49 years, 2 months and 13 days and was drawing a salary of ₹27,000/- per month as a Lineman in DHBVN Sub Division, South City, Gurgaon. He left behind a wife and three children. The Tribunal awarded compensation of ₹14,60,000/- along with interest @ 6% p.a and held that the Insurance Company would be liable to pay the same but would have a right to recover it from the owner.

The claimants have filed FAO No. 1533-2014 for enhancement, the Insurance Company has filed FAO No.1009-2013 for reduction and the owner has filed FAO No. 2393-2013 against the recovery rights.

Coming first to the appeal of owner, it may be noticed that two driving licences were placed on record and one was proved to be fake by the Insurance Company.

Learned counsel has argued that merely because one licence was proved to be fake, it could not lead to the conclusion that the second licence was not to be taken into consideration and that licence has not been proved to be fake and consequently, recovery rights could not have been given to the Insurance Company.

Counsel for the Insurance company has argued that under Section 6 of the Motor Vehicles Act, 1988 no person can have more than one driving licence. That is ofcourse so, but it only bars a person from applying and obtaining two valid driving licences. A fake driving licence is just that, a fake, but it would not detract from a regular driving licence which may be subsequently obtained. In the circumstances, the recovery rights which have been granted to the Insurance Company have to be set aside.

Ordered accordingly.

Coming to the appeal filed by the Insurance Company, learned counsel has argued that this was a case where the family of the deceased was given full salary upto the date of his retirement and in view of the judgment of the Supreme Court in **Reliance General Insurance Co. Ltd. v. Shashi Sharma and others 2016(4) RCR (Civil) 569**, the amount which the claimants obtained as salary had to be deducted from the compensation which may be computed. In the present case, the Tribunal has taken a different approach.

Mr. Kalsi, learned counsel appearing on behalf of the claimants has accepted the judgment cited by the counsel for the Insurance Company but points out that what the Tribunal did was to add the number of years for which the claimants had got the salary to the age of the deceased thereby reducing the multiplier and as per him it is a case of six of one and half a dozen of the other. Though on fact, the argument of the counsel for the claimants has some merit and even the counsel for the Insurance Company has accepted that even if the compensation is computed by both the methods it would not make too much of difference yet he is right in asserting that the compensation could only be computed in the manner laid down by the Supreme Court. In the circumstances, it has to be held that first the compensation has to be computed as per the actual age of the deceased and then the total amount which the claimants received as salary from the employer would have to be deducted therefrom. Ordered accordingly.

In the appeal by the claimants, learned counsel has argued that Tribunal erred in deducting the GPF contribution. Counsel for the Insurance Company has accepted that GPF contribution could not have been deducted.

The next argument of the counsel for the claimants is that as per **National Insurance Co. Ltd. v. Pranay Sethi and others 2017(4) RCR (Civil) 1009,** future prospects of 30% had to be added to the income. Counsel for the Insurance Company is not in a position to deny this also. Ordered accordingly.

The third argument raised is that since there were four claimants, deduction could not have been 1/3rd and had to be 1/4th only. Counsel for the Insurance Company has also accepted this. Ordered accordingly.

The next argument is that under the Conventional head only 20,000/- has been paid whereas as per the aforesaid judgment of **Pranay Sethi's case (supra)** ₹70,000/- has to be awarded. This argument too is accepted.

The final argument of the counsel for the claimants is that interest at the rate of 6% is also too low and in some cases interest upto 12% has been granted. There is some merit in this argument and I consequently enhance the interest to 8% from the date of filing of claim petition till the date of payment.

All the three appeals are disposed of in the above terms.

A photocopy of the order be placed on the files of connected appeals numbered above.

Since,the main appeals have been decided, pending civil misc. applications, if any, stand disposed of.

12.07.2018 **(AJAY TEWARI)**
mamta **JUDGE**

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