IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 16.02.2018

(i) F.A.O. No. 6500 of 2012 (O&M)

Smt. Jasbir Kaur and others

.......Appellants

Versus

Sucha Singh and others

......Respondents

(ii) F.A.O. No. 3956 of 2010 (O&M)

ICICI Lombard General Insurance Co. Ltd.

.......Appellant

Versus

Smt. Jasbir Kaur and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Raj Kumar Rana, Advocate
for the appellants(claimants).

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for respondent No. 2-Insurance Company
in FAO No. 6500 of 2012 and
for appellant in FAO No. 3956 of 2010.

AVNEESH JHINGAN, J.(Oral)

This order shall dispose of FAO Nos. 6500 of 2012 and 3956 of 2010 as both these appeals have arisen from a common award dated 12.03.2010 passed by the Motor Accidents Claims Tribunal, Patiala (for short 'the Tribunal').

For brevity, the facts are being extracted from FAO No. 6500 of 2012.

An accident took place on 07.11.2008 in which Kulwant Singh aged 30 years lost his life. He was going from Zirakpur to Rajpura on a three wheeler bearing registration No.PB-11-1432. The three wheeler was being driven by Sucha Singh. Near Apsra Marriage Palace, village Chhat, Tehsil Derabassi, an army vehicle bearing registration No.91/R/5171-K-AM-50 was parked on the left side on the metalled portion of the road. The said vehicle was in a break down condition. The three wheeler struck against the rear portion of the army vehicle. As a result of the accident, three occupants of the three wheeler suffered injuries and were taken to Govt. Medical College and Hospital, Sector 32, Chandigarh. Kulwant Singh succumbed to his injuries on 08.11.2008. In a claim petition filed by the legal heirs of the deceased under Section 166 of the Motor Vehicles Act, (for short 'the Act'), the Tribunal noticed that the age of the deceased was 30 years; his earning was assessed at Rs.5000/- per month and keeping in view the fact that he was survived by four dependents, deduction for self expenses of $1/4^{th}$ was made and a multiplier of 17 was applied. An amount of Rs. 7,65,000/- was awarded along with interest at the rate of 6% per annum.

The present appeal (FAO No. 6500 of 2012) has been filed for enhancement of compensation.

Learned counsel for the appellants assailed the award by arguing that (i) no future prospects had been added for calculating the compensation and (ii) no amount has been awarded under conventional heads.

Learned counsel for the Insurer defended the award and argued that no case is made out for interference.

The contention raised by learned counsel for the appellants deserves acceptance.

Giving due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others*** 2017 AIR (SC) 5157, and in ***Hem Raj Versus Oriental Insurance Company Ltd. (in Civil Appeal No. 19602 of 2017 decided on 22.11.2017),*** 40% future prospects are to be awarded where the deceased was below 40 years. Future prospects are to be added even in cases where the income has been assessed relying upon the minimum wages prevalent at the time of accident. Further an amount of Rs.70,000/- has to be awarded under conventional heads i.e. Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses

Since the loss of dependency calculated by the Tribunal has not been disputed, 40% future prospects on Rs.7,65,000/- is awarded i.e. Rs. 3,06,000/-. An amount of Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses is awarded under conventional heads.

The award dated 12.03.2010 is modified to the extent that the amount awarded of Rs. 7,65,000/- is enhanced by Rs. 3,76,000/-.

The appellants would be entitled to enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the above said terms.

FAO No. 3956 of 2010

As regard to the second appeal bearing FAO No. 3956 of 2010, the Insurance Company has challenged its liability on the ground that the driver of three wheeler was not holding a license for LMV which had no endorsement of transport vehicle.

The appeal of the Insurance Company qua respondents/claimants No. 1 to 5 was dismissed by this Court vide order dated 30.09.2011.

The issue raised regarding driving license is squarely covered by the decision of the Supreme Court in ***Mukand Dewegan Vs. Oriental Insurance Co. Limited,*** 2016(4) SCC 298. It has not been disputed that the three wheeler comes within category of light motor vehicles. There is no dispute that there was a valid licence held by the driver for light motor vehicle.

The Surpeme Court has held that if the driver is holding a valid license for light motor vehicle, such licence would be valid for the transport vehicle of the said category also.

The appeal, having no merit, is hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

16.02.2018
reema

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No