IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 800 of 2012

Ritu Marwaha and others

.... APPELLANTS

Versus

Amarinder Singh and others

.... RESPONDENTS

(2) FAO No. 1593 of 2012 (O&M)

Iffco Tokio General Insurance Company Limited

.... APPELLANT

Versus

Ritu Marwaha and others

.... RESPONDENTS

DATE OF DECISION : 02.02.2018

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Rishav Jain, Advocate,
for the appellants (in FAO No. 800 of 2012) and
for respondents No.1 to 3 (in FAO No. 1593 of 2012)

Mr. Akshit Aggarwal, Advocate, for
Mr. Sherry K. Singla, Advocate,
for respondents No.1 and 2 (in FAO No. 800 of 2012) and
for respondents No.7 and 8 (in FAO No. 1593 of 2012)

Mr. Rajbir Singh, Advocate,
for respondent No.3 (in FAO No. 800 of 2012) and
for the appellant (in FAO No. 1593 of 2012)

* * *

AVNEESH JHINGAN, J.

Two appeals have been filed against the award dated

08.11.2011 passed by the Motor Accident Claims Tribunal, Patiala (for short, `the Tribunal').

2. FAO No. 800 of 2012 has been filed by the claimants for enhancement of compensation. The Insurance Company had filed FAO No. 1593 of 2012 on the grounds that involvement of Toyota Qualis bearing registration No. PB-65F-0707 (for short, `the offending vehicle') was not proved; compensation awarded by the Tribunal is on the higher side; and that the driver had licence to drive LMV but without endorsement of transport vehicle Toyota Qualis was being driven.

3. The facts of the case are that on 27.03.2009, Rohit Kumar, aged 32 years, was going on a scooter bearing registration No. PB-11H-7485. Near Shiv Mandir, Jagat Nagar, Patiala, he was hit by the offending vehicle. Rohit Kumar suffered injuries on head and other parts of the body. He was taken to Amar Hospital, Patiala, where he succumbed to his injuries on 29.03.2009. FIR was registered against the driver of the offending vehicle.

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') was filed by the widow, two minor children and mother of the deceased. The Tribunal awarded a sum of ₹ 13,63,000/- along with interest at the rate of 9% per annum.

5. It is important to note here that the Tribunal, while passing the award, specifically held that the mother of the deceased was not dependent upon her deceased son, therefore, she is not entitled to any compensation. The mother died during pendency of the claim petition. Her legal heirs have

been arrayed as respondents No.4 to 6 in FAO No. 1593 of 2012.

FAO No. 1593 of 2012

6. Before proceeding with the enhancement part, it would be appropriate to decide the appeal filed by the Insurance Company first. The issue raised that the licence of driver of the offending vehicle was not valid for driving Toyota Qualis as there was no endorsement to drive transport vehicle, cannot be accepted. It has not been disputed that Toyota Qualis falls within the definition of LMV.

7. The issue raised is no longer res integra. The Hon'ble Apex Court in ***Mukand Dewegan Vs. Oriental Insurance Co. Limited, 2016(4) SCC 298*** has held as under :-

> *"46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles.*
>
> *It was pre-amended position as well the post- amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2 (21) and the provisions of section 10 (2) (d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in*

tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section10 (2) (e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10 (2) (e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2 (21)read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10 (2) (d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or

tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10 (2) (d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10 (2) which contained "medium goods vehicle" in section 10 (2) (e), medium passenger motor vehicle in section 10 (2) (f), heavy goods vehicle in section 10 (2) (g) and "heavy passenger motor vehicle" in section 10 (2) (h) with expression 'transport vehicle' as substituted in section 10 (2) (e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10 (2) (d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

> *Law enunciated in the above decisions is that a light motor vehicle would include the transport vehicle as per the weight prescribed under Section 2 (21) read with Section 2 (15) and 2 (48). There is no need to obtain separate endorsement to drive transport vehicle."*

8. It was held that the driving licence for LMV would be a valid driving licence for driving transport vehicles of the same class.

9. The other two issues raised by the Insurance Company in the appeal, regarding quantum of compensation and involvement of the offending vehicle are not required to be adjudicated. This court vide order dated 28.04.2015 dismissed the appeal of the Insurance Company qua respondents No.1 to 3 and 6 (claimants) for want of prosecution. The order was passed in presence of learned counsel for the Insurance Company. The order is re-produced below :-

> *"Present : Mr. Pankaj Midha, Advocate,*
> *for the appellant.*
>
> *None for respondent Nos. 7 & 8.*
>
> . . .
>
> *Office report reveals that notices to respondent Nos.1 to 3 and 6 were not issued since learned counsel for the appellant not only failed to furnish their correct addresses but also failed to collect the dasti notices.*
>
> *On 19.07.2012, this Court had directed the appellant to furnish the details or correct addresses of respondent Nos. 1 to 3 and 6 in a week's time. Even after elapse of two years and approximately nine months, the appellant has*

failed to furnish the correct addresses of respondent Nos. 1 to 3 and 6 as such, the request for adjournment to do the needful is absolutely unjustified. In view of the above, the present appeal is dismissed qua respondent Nos. 1 to 3 and 6 for want of prosecution.

List on 04.05.2015 for consideration.

Sd/-
(NARESH KUMAR SANGHI)
April 28, 2015 JUDGE"

10. The said order, till date, has neither been challenged nor any application was moved for setting aside the same. Respondents No.4 and 5 are the legal heirs of the mother of the deceased. They are not the contesting respondents in the present appeal. The Tribunal had already held that mother of the deceased was not dependent upon him and no compensation could be awarded to her. The said finding has not been challenged by any party.

11. The appeal of the Insurance Company is, accordingly, dismissed.

<u>FAO No. 800 of 2012</u>

12. Learned counsel for the appellants contends that the Tribunal rightly assessed the income of the deceased as ₹ 1,20,000/- per annum. The multiplier of 16 applied and 1/3rd deduction for self expenses made by the Tribunal are also not disputed being in consonance with the decision of the Hon'ble Apex Court in ***<u>Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.</u>***

13. The grievance of the appellants is that no future prospects have

been awarded. The amounts awarded for funeral expenses and loss of consortium are on the lower side and no amount has been awarded for loss of estate.

14. Learned counsel for the Insurance Company argued that a sum of ₹ 10,000/- has been wrongly awarded for loss of love and affection, as per the latest decision of the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017***.

15. The contentions raised by learned counsel for the appellants deserve acceptance. The contentions are duly covered by the decision of the Hon'ble Apex Court in ***Pranay Sethi's case*** (supra), wherein it has been held that where the deceased was below 40 years of age and was self-employed or having a fixed salary, 40% future prospects are to be awarded. In the present case, there is no dispute to the fact that at the time of the accident, the deceased was 32 years of age. It has also been proved that he had business of readymade garments and a Music Centre. The Income Tax returns were produced before the Tribunal.

16. Since there is no dispute with regard to loss of dependency, 40% of ₹ 12,80,000/-, i.e. ₹ 5,12,000/-, is awarded as future prospects.

17. The Hon'ble Apex Court in ***Pranay Sethi's case*** (supra) has held that a sum of ₹ 70,000/- is to be awarded under the conventional heads, i.e. ₹ 15,000/- each for funeral expenses and loss of estate and ₹ 40,000/- for loss of consortium.

18. The contention raised by learned counsel for the Insurance

Company also finds support from the decision of the Hon'ble Apex Court in ***Pranay Sethi's case*** (supra), wherein it has been held that no amount is to be awarded for loss of love and affection.

19. In view of the aforesaid discussion and decision of the Hon'ble Apex Court, the total amount of ₹ 32,000/- awarded under the conventional heads is enhanced to ₹ 70,000/-.

20. The award dated 08.11.2011 is modified to the extent that the compensation of ₹ 13,63,000/- awarded by the Tribunal is enhanced by ₹ 5,50,000/-.

21. The claimants shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing the claim petition till realisation of the amount.

22. FAO No. 800 of 2012 is partly allowed in the aforesaid terms, and for the reasons recorded above, FAO No. 1593 of 2012 is dismissed.

February 02, 2018 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes