IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 10.01.2018

FAO-1541-2013 (O&M)

ORIENTAL INSURANCE CO LTD ...Appellant

Versus

SANTOSH & ORS ...Respondents

FAO-4904-2013 (O&M)

SANTOSH & ORS ...Appellants

Versus

SATNAM SINGH AND ORS. ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.K. Bashamboo, Advocate
for the insurance company.

Mr. Maharaj Kumar, Advocate
for the claimants.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1541 and 4904 of 2013 as these have emerged out of the same award dated 10.12.2012 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been awarded on account of death of Prem Pal in a motor vehicular accident that took place on 11.12.2009.

FAO No.1541 of 2013 has been filed by the insurance company whereas FAO No.4904 of 2013 has been filed by the claimants seeking enhancement of compensation.

FAO No.1541 of 2013

The sole submission made by counsel for the insurance company is that as driver of motorcycle bearing No. HR-05-L-6319 on which deceased was travelling as a pillion rider struck on backside of truck bearing No.HR-58-A-2877 (alleged offending vehicle), the present is a case of composite negligence of two vehicles involved in the accident, therefore, findings recorded by the Tribunal attributing exclusive negligence to the truck may cause prejudice to the insurance company to recover the amount of compensation to the extent of negligence attributable to driver of the motorcycle. It is further argued that a finding needs to be recorded as to the extent of negligence attributable to the motorcyclist.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 whereby the truck driver has been held liable for causing the accident due to his rash and negligent driving.

Be that as it may, it is an undisputed position of the case that in case of a composite negligence of two vehicles, claimants can prefer their claim against either of the tort-feasers. Equally settled is that in a case of composite negligence, the Tribunal does not owe an obligation to determine the extent of negligence attributable to each of the vehicles involved in the occurrence. This apart, plea of the insurance company to record any finding either with regard to composite negligence of the other vehicle or extent thereof is not possible in the circumstances that the driver, owner and insurer of the motorcycle are not a party to the petition filed by the claimants. In this view of the matter, contention raised by counsel for the insurance company is not tenable and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

FAO No.4904 of 2013

The Tribunal has assessed compensation to the tune of Rs.12,68,120/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.8000/-
2. Multiplier	15
3. Deduction for personal expenses	1/3rd
4. Increase in income for future prospects	30%
5. Loss of dependency	Rs.12,48,120/-
6. Expenses on funeral and last rites	Rs.5,000/-
7. Loss of consortium	Rs.15,000/-

Counsel for the claimants would urge that as the deceased was less than 40 years of age, admissible increase in income for future prospects is 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.** Adequate compensation may be allowed under conventional heads. It is argued that the Tribunal has allowed deduction of 1/3rd for personal expenses but as the application for compensation was filed by the widow, two minor children and parents of deceased Prem Pal, admissible deduction would be 1/4th in the light of ratio laid down by Hon'ble the Supreme Court in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77.**

Counsel representing the insurance company has supported the assessment made by the Tribunal with the submission that compensation assessed by the Tribunal is just and reasonable.

The deceased was working as a teacher in a private school. His income has been assessed on the basis of evidence on record. Indisputably, deceased was less than 40 years of age, therefore, claimants are entitled to increase in income for future prospects @ 40%.

The application for compensation was filed by the widow, two minor children and parents of deceased. Even if father of the deceased was not dependent on his earning, admissible deduction would be 1/4th. Multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.15,12,000/- (Rs.8000 x 12 x 15) + (40% future prospects) – (1/4th 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/-

The total compensation comes to Rs.15,82,000/- and the additional amount is Rs.3,13,880/- (15,82,000 – 12,68,120), payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the widow and minor children of the deceased in the ratio 50:25:25. The share of minor children shall be deposited in FDRs 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.

10.01.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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