IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO-10046-2014 (O&M)

New India Insurance Company Ltd.

..... Appellant

Versus

Smt. Sahab Devi and others

..... Respondents

2. FAO-3374-2017 (O&M)

Smt. Sahab Devi and another

..... Appellants

Versus

Kashmiri Lal and others

..... Respondents

Date of decision: 29.05.2018

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Vandana Malhotra, Advocate
for the appellant-Insurance Co. (in FAO-10046-2014) and
for respondent No. 3-Insurance Co. (in FAO-3374-2017).

Mr. Navmohit Singh, Advocate
for respondents No. 1 and 2 (in FAO-10046-2014) and
for the appellant (in FAO-3374-2017).

Ms. Rajni Maurya, Advocate for
Mr. Naveen Batra, Advocate
for respondents No. 3 & 4 (in FAO-10046-2014) and
for respondents No. 1 and 2 (in FAO-3374-2017).

RAMENDRA JAIN, J. (ORAL)

1. Through this common judgment, two above titled appeals i.e. one filed by the appellant-Insurance Company (FAO-10046-2014) for reduction, another by the widow and son of deceased-Fakir Chand (FAO-3374-2017), for enhancement of compensation, against the impugned Award dated 09.09.2014, of the Motor Accident Claims Tribunal,

Kurukshetra (for short-'the Tribunal'), are being disposed of. For brevity, the facts are being extracted from FAO-10046-2014.

2. In nutshell, on 04.09.2013, Fakir Chand, aged around 59 years died in a motor vehicular accident, while driving and striking his motorcycle bearing registration No. HR-49-9551, against a stationary truck bearing registration No. HP-12-D-4912, driven by respondent No. 3-Kashmiri Lal, owned by respondent No. 4-Gurmeet Singh and insured by the appellant. The learned Tribunal, in a claim petition under Section 166 of the Motor Vehicles Act, 1988, awarded compensation to the tune of ₹6,21,800/- only to the widow of the deceased (respondent No. 1 herein) vide Award impugned herein, while dismissing the claim petition on behalf of respondent No. 2 herein being major son of the deceased.

3. Learned counsel for the appellant-Insurance Company contends that claimant-respondent No. 2-Pawan Kumar (appellant No. 2 in connected appeal bearing FAO-3374-2017) being married son of deceased-Fakir Chand, was rightly not treated as dependent by the learned Tribunal. Only respondent No. 1-Sahab Devi, widow of deceased-Fakir Chand, was held entitled for the entire compensation aforesaid, as a sole dependent. Since, widow alone was declared as sole dependent, therefore, the learned Tribunal ought to have deducted 50% from the alleged income of the deceased, instead of 1/3rd towards his personal expenses.

4. This Court finds force in the above submission of learned counsel for the appellant-Insurance Company, in view of the fact that in various authoritative pronouncements of Hon'ble the Apex Court and various High Courts, 1/3rd deduction has been held to be genuine towards personal expenses of the deceased, where there are 2 to 3 dependents upon a

deceased. In the instant case, only one person has been declared as dependent upon the deceased, therefore, it is a fit case where deduction of 50% should be applied towards personal expenses of the deceased from his alleged income.

5. Relying upon a judgment of Hon'ble the Supreme Court in ***National Insurance Company Ltd.* Vs. *Pranay Sethi and others,* 2017 (4) RCR (Civil) 1009,** learned counsel for the appellant-Insurance Company contends that the learned Tribunal has wrongly added 15% to the income of the deceased towards future prospects, though the same could not have been added more than 10%. She further contends that the learned Tribunal has awarded ₹1,00,000/- and ₹25,000/-, respectively, towards loss of consortium and funeral expenses, which could not have been awarded beyond ₹ 40,000/- and ₹15,000/-, in view of the above referred judgment. However, she fairly conceded that respondent No. 1-widow-claimant is entitled to ₹ 15,000/- towards loss of estate which has not been granted by the learned Tribunal.

6. Learned counsel for the appellant-Insurance Company, lastly contended that it was a case of contributory negligence, because deceased had struck his motorcycle behind a stationary truck in day light, inasmuch as, in the month of September, there is no complete dark by 7.00 PM and, thus, the deceased could see the stationary truck from a suitable distance, if, he would not have been driving his motorcycle in a rash and negligent manner.

7. Having given considerable thought to the above submission of learned counsel for the appellant-Insurance Company, this Court finds no merit in the same in view of the fact that in the month of September, there is

complete dark by 7.00 PM. Even from a short distance, no object is visible around 7.00 PM. Thus, from any angle deceased-Fakir Chand, cannot be said to have contributed in the accident resulting into his own death.

8. Both the sides are *ad idem* that this appeal has to be decided in accordance to the principles laid down in ***Pranay Sethi's case (supra).***

9. As per calculations 'Mark-A' furnished by learned counsel for the appellant-Insurance Company, the amount of compensation payable to respondent No. 1-widow-claimant, is liable to be reduced from ₹6,21,800/- to ₹4,26,400/-.

10. Learned counsel for respondents No. 1 and 2 has not been able to point out any infirmity in the above calculations 'Mark-A'.

11. Ordered accordingly.

12. Consequently, the appeal filed by appellant-Insurance Company (FAO-10046-2014) is partly allowed, whereas appeal (FAO-3374-2017) filed by appellant-claimants, is rejected.

13. The appellant-Insurance Company, shall deposit the balance amount, if any, before the learned Tribunal along with interest @ 7.5 % per annum from the date of filing of claim petition till realization, which shall be disbursed to respondent No. 1-widow-claimant, in accordance with law against proper receipt and identification.

May 29, 2018 **(RAMENDRA JAIN)**
rishu **JUDGE**

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