IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 25.04.2018

FAO No.10133 of 2014 (O&M)

HDFC ERGO GENERAL INSURANCE COMPANY LTD ... Appellant

Versus

PARMOD KUMAR & ORS ... Respondents

FAO No.1055 of 2015 (O&M)

PARMOD KUMAR & ANR ... Appellants

Versus

PEHLAD SINGH & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Goyal, Advocate for the insurance company.

Mr. C.L. Verma, Advocate for the claimants.

None for the owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.10133 of 2014 and 1055 of 2015 as these have emerged out of the same award dated 22.08.2014 passed by the Motor Accidents Claims Tribunal, Palwal whereby compensation has been awarded on account of death of Deepak in a motor vehicular accident that took place on 21.07.2012.

FAO No.10133 of 2014 has been filed by HDFC Ergo General

Insurance Co. Ltd. whereas FAO No.1055 of 2015 by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal qua the issue of driving licence as well as quantum of compensation.

The Tribunal has awarded compensation of Rs.4,13,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	16 (multiplier of 5 on income of the deceased Rs.36,000/- per annum and 11 on Rs.18,000/- per annum)
3. Deduction for personal expenses	1/3rd
4. Expenses on funeral	Rs.10,000/-
5. Loss of estate	Rs.5000/-
6. Loss of consortium and loss of love and affection	Rs.20,000/-

Counsel for the insurance company has submitted that as driver of the offending vehicle was possessing licence to drive a light motor vehicle without any endorsement of transport, insurance company is entitled to be exonerated of liability to pay compensation or in the alternative right of recovery against the insured.

With regard to quantum of compensation, counsel for the claimants would urge that claimants are entitled to benefit of increase in income for future prospects @ 40%. The split multiplier adopted by the Tribunal cannot be allowed to sustain and an appropriate multiplier of 18 may be allowed in the light of judgment of Hon'ble the Supreme Court

Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77.

Counsel for the insurance company, in reply, has submitted that the Tribunal has allowed deduction for personal expenses to the tune of 1/3rd but the same should be 50% as application for compensation has been filed by parents of the deceased. Compensation allowed under conventional heads needs to be restricted to Rs.30,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel for the claimants has refuted contention of the insurance company on the issue of driving licence by relying upon latest judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited, 2017(7) Scale 731**.

I have heard counsel for the parties, perused the paper book particularly the award.

So far as plea of the insurer that driver was not possessing a valid licence entitling the insurance company either to seek exoneration or right of recovery, indisputably, gross weight of the three wheeler in question is less than 7500 kgs., therefore, it falls within the definition of Light Motor Vehicle defined in Section 2(21) of the Motor Vehicles Act, 1988. That being so, controversy raised in the present appeal is squarely covered by judgment of Hon'ble the Supreme Court in **Mukund Dewangan's case** (supra) in favour of the insured. In this view of the matter, findings recorded by the Tribunal on issue No.3 are ordered to be affirmed.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has assessed income of the deceased Rs.4500/- per month. Counsel for the claimants has not made any submissions justifying enhancement of income. Accordingly, income of the deceased assessed by the Tribunal is affirmed. The application for compensation has been filed by parents of the deceased, aged about 19 years and unmarried. Admissible deduction for personal expenses is 50% in the light of judgment of Hon'ble the Supreme Court in **Sarla Verma's case** (supra). The Tribunal has allowed split multiplier of 16. There are no special circumstances in the present case to adopt split multiplier when otherwise in view of age of the deceased, admissible multiplier is 18 in the light of judgments of Hon'ble the Supreme Court **Sarla Verma's case (supra), Pranay Sethi's case (supra)** and **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315**. As the deceased was 19 years old, claimants shall be entitled to addition in income for future prospects @40%. In this manner, loss of dependency comes to Rs.6,80,400/- (Rs.4500 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

Compensation awarded by the Tribunal under conventional heads is modified to the effect that claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss of estate.

Total compensation is Rs.7,10,400/- and the additional amount is Rs.2,97,400/- (7,10,400 – 4,13,000), payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased.

The appeal filed by the insurance company is dismissed in the aforesaid terms. However, the appeal filed by the claimants is partly allowed in the terms indicated hereinbefore.

Statutory amount of Rs.25,000/- be remitted to the Tribunal for payment to the claimants.

25.04.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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