IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

<u>Date of decision: 12.03.2018</u>

FAO No.1350 of 2014 (O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Baksho Devi and others ... Respondents

FAO No.4311 of 2014 (O&M)

Baksho Devi and others ... Appellants

Versus

Sachin Aggarwal and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Karan Garg, Advocate for
Mr. Rahul Deswal, Advocate
for the claimants.

Mr. Navin Kapur, Advocate
for the insurance company.

None for driver-cum-owner.

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<u>REKHA MITTAL, J. (Oral)</u>

CM No.4694-CII of 2014 in FAO No.1350 of 2014

Heard.

Allowed as prayed for. Delay of 02 days in filing the appeal stands condoned.

Main Cases

This order will dispose of FAO Nos.1350 and 4311 of 2014 as these have emerged out of same award dated 28.10.2013 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been awarded on account of death of Naresh Kumar in a motor vehicular accident that took place on 25.04.2012.

FAO No.1350 of 2014 has been filed by Oriental Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas FAO No.4311 of 2014 has been filed by claimants seeking enhancement of compensation.

Counsel for the insurance company has assailed the award primarily on three counts. It is argued that testimony of Dharam Pal PW1 is not sufficient to establish plea of the claimants and discharge onus of issue No.1 that accident occurred due to rashness and negligence on the part of alleged offending vehicle i.e. truck No.HR-58-5097. To bring home his contention, he has carried the Court through testimonies of Dharam Pal PW1 and Sachin Aggarwal RW1, Annexures P1 and P4 respectively.

The second submission made by counsel is that as the offending truck was being plied without permit, insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative given recovery right against the insured. For this purpose, he has pointed out concluding lines in the examination-in-chief of Sachin

Aggarwal RW1 and order dated 01.12.2016 passed by this Court.

With regard to quantum of compensation assessed by the Tribunal, it is argued that compensation awarded under conventional heads is liable to be restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel representing the claimants has supported findings of the Tribunal on issue no.1 by contending that as the offending vehicle was parked on the road without any indicators/reflectors etc., testimony of Dharam Pal coupled with that Sachin Aggarwal faced criminal trial for causing the accident are sufficient to establish plea of the claimants that occurrence took place because of rashness and negligence on the part of driver of the truck.

He has prayed for enhancement of compensation on the plea that claimants are entitled to increase in income for future prospects @ 40% as the deceased was 35 years old at the time of occurrence.

I have heard counsel for the parties, perused the paper book and the records.

Indisputably, there is no denial that the occurrence in question took place when a Tata qualis bearing No.HR-55A-2207 driven by Naresh Kumar hit against the offending truck which was admittedly lying parked on the road. Dharam Pal, occupant of the ill-fated car tendered into evidence his duly sworn affidavit Ex.PW1/A in Hindi. A relevant extract from affidavit, translated in English, reads as follows:-

> *"On 25.04.2012 at about 09.00 pm I and my brother Naresh Kumar son of Narata Ram started from village Sirsal to village Badi Bassi in Qualis vehicle bearing no.HR-55A-2207. Naresh Kumar was driving the vehicle. I was sitting on the rear seat. At about 10.30/11.00 at night when we reached ahead of Patarhedi on Saha Shezadpur Road truck bearing No.HR-58-5097 was standing on the road and the truck driver had not made the parking light or indicators on nor placed any warning sign behind the truck. There was light coming from the vehicles from the opposite direction and for that reason truck could not be noticed. Our vehicle Qualis stuck against the truck standing in middle of the road and the steering wheel of the vehicle stuck against chest of Naresh Kumar and the vehicle got entangled on the back of the truck. I came down and the vehicle coming on the road stopped. I along with help of others took out my brother Naresh Kumar and noticed that blood was coming from his mouth. We shifted him to Government Hospital, Naraingarh in ambulance and the doctors declared him dead."*

In his cross-examination, he has deposed that they had seen the truck first time after the accident. Speed of their vehicle was about 50 kms per hour at the time of accident. He has denied suggestion that accident occurred due to sole negligence of Naresh Kumar while driving vehicle No.HR-55A-2207.

Perusal of testimony of Dharam Pal would suggest that the opposite party failed to elicite any material and tangible facts sufficient to doubt correctness of his testimony or his being an eyewitness to the occurrence. Counsel has failed to point out any materials in his cross-examination to give even an inkling that occurrence took place because of rashness and negligence on the part of Naresh Kumar while driving vehicle No.HR-55A-2207. Counsel for the insurance company has also not disputed that Sachin Aggarwal, driver of the offending truck was put to trial after due investigation in FIR No.154 dated 26.04.2012 lodged with Police Station Shahjadpur for offence under Sections 283 and 304-A IPC. The said factum also stands established in view of testimony of PW3, an official from the Court of Judicial Magistrate 1st Class, Naraingarh, District Ambala.

Sachin Aggarwal appeared in the witness box to counter testimony of Dharampal and substantiate his plea that accident took place due to rashness and fault of Naresh Kumar (since deceased). However, he has admitted that he is facing criminal trial regarding this accident. As Sachin Aggarwal was facing trial for causing the occurrence, he had every reason to deny his liability both civil and criminal. Under the circumstances, testimony of Sachin Aggarwal is not sufficient to rebut statement of Dharam Pal which could not be discredited despite cross-examination at length. In this view of the matter, I have no hesitation to agree with findings recorded by the Tribunal upholding plea of the claimants that accident occurred due to negligence of driver of the offending vehicle having parked it on the road without any indicators, reflectors and signs, giving pre-warning to other vehicles. In this view of the matter, contention raised by the insurance company to assail findings of the Tribunal on issue No.1 is not meritorious and accordingly rejected.

The Tribunal has awarded compensation of Rs.11,06,200/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6050/-
2. Multiplier	16
3. Deduction for personal expenses	1/4th
4. Loss of dependency	Rs.8,71,200/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of consortium	Rs.1,00,000/-
7. Loss of estate	Rs.10,000/-
8. Loss of care and guidance of minor children	Rs.1,00,000/-

Contention raised by the claimants for allowing future prospects is meritorious in the light of latest judgment in **Pranay Sethi's case** (supra). Income of the deceased, multiplier and deduction for personal expenses applied by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.12,19,680/- (Rs.6050 x 12 x 16) + (40% future prospects) – (1/4th deduction for personal expenses).

Under conventional heads, the Tribunal has awarded an amount of Rs.2,35,000/- detailed hereinbefore. In the light of judgment in **Pranay Sethi's case** (supra), 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/-

Total compensation is Rs.12,89,680/- and the additional amount is Rs.1,83,480/- (12,89,680 – 11,06,200), payable with interest

@7.5% per annum from the date of petition till realization to widow and children of the deceased in equal proportion. The share of minors shall be invested in FDRs, payable on their attaining age of majority or for a period of three years, whichever is later.

This brings the Court to the plea with regard to failure of owner of the offending truck to produce permit on record, entitling the insurance company to press for recovery right against the insured. Sachin Aggarwal in the concluding lines of his examination-in-chief has deposed to the following effect:-

> *"The route permit of my truck was lost and I have applied for duplicate route permit about 2-3 months back, but the department has not issued duplicate route permit till date."*

On 01.12.2016, order passed by this Court reads as follows:-

> *"Counsel for the appellant has submitted that as registered owner of the vehicle did not produce a copy of permit, an adverse inference is to be drawn against the owner/insured that he did not possess any permit.*
>
> *Counsel for respondent No.7 prays for two weeks time in order to enable him to file an appropriate application for additional evidence for production of duplicate copy of the route permit.*
>
> *Adjourned to 18.01.2017."*

Counsel representing respondent No.7 in FAO No.1350 of 2014 is not present in the Court to say something about his failure to produce duplicate copy of route permit. However, perusal of cross examination of Sachin Aggarwal would reveal that the witness was not cross examined by counsel for the insurance company and he was only cross examined by counsel for the claimants. There is nothing on record suggestive of the fact that the insurance company ever called upon Sachin Aggarwal to produce copy of the permit, required to be obtained in terms of Section 66 of the Motor Vehicles Act, 1988 (in short 'the Act'). As the insurance company did not adduce any evidence that Sachin Aggarwal did not possess permit to ply the vehicle in question, it can not be heard to say that registered owner has failed to produce copy of the permit constituting a valid defence in favour of the insurer under Section 149(2) of the Act. In this view of the matter, insurance company can neither escape its liability to pay compensation to the claimants nor can press for right of recovery against the insured.

No other point has been raised.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

12.03.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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