IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.08.2018

FAO No.3696 of 2013 (O&M)

New India Assurance Company Ltd. ... Appellant

Versus

Maya Devi and others ... Respondents

FAO No.7581 of 2014 (O&M)

Maya Devi and others ... Appellants

Versus

Devinder Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Talwar, Advocate
for New India Assurance Co. Ltd.

Mr. V. M. Gupta, Advocate
for United India Insurance Co. Ltd.

Mr. Aman Dhir, Advocate
for the claimants.

None for the driver and owner of Tata 609.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3696 of 2013 and 7581 of 2014 as these have emerged out of the same award dated 20.02.2013 passed by the Motor Accidents Claims Tribunal, Ludhiana whereby compensation has been assessed on account of death of Dev Raj Paudel in a motor vehicular accident that took place on 25.11.2005. Liability to pay compensation to the extent of 75% has been fastened against the driver, owner and insurer of truck bearing No.PB-10-AZ-1800 and 25% to be borne by the owner, driver and insurer of Tata 609 bearing registration No.PB-12B-1178 but the insurance company of the said vehicle has been given right of recovery against the owner and driver of Tata 609 by initiating proceedings before the executing Court without filing suit.

FAO No.3696 of 2013 has been filed by the New India Assurance Company Ltd. (insurer of Tata 609 bearing No.PB-12B-1178) whereas the other appeal has been preferred 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 imposing liability against the insurance company.

FAO No.3696 of 2013

Counsel for the insurance company would urge that Tata 609 is a goods vehicle and deceased Dev Raj Paudel was neither employee of the owner nor driver of the goods vehicle, therefore, he is to be treated as a gratuitous passenger carried in a goods vehicle and as such, the insurance company is not liable to pay compensation to the claimants. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Manager, National Insurance Company Ltd. VS. Saju P. Paul and**

another, 2013(1) RCR (Civil) 869.

There is no representation on behalf of the driver and owner of Tata 609.

The Tribunal, in para 28 of the award, has held that claimants have failed to prove that deceased Dev Raj Paudel was authorised representative of owner of Tata 609 bearing No.PB-12B-1178. So in view of the judgments mentioned above, the insurance company respondent No.3 is not liable to any compensation to the claimants.

As the deceased was a gratuitous passenger travelling in a goods vehicle and in absence of any specific contract covering the risk of injury or death of a gratuitous passenger carried in a goods vehicle, the insurance company cannot be held liable to pay compensation. The judgment relied upon by counsel for the insurance company squarely covers the controversy raised by the insurance company. Similar issue has been decided by this Court in **Data Ram and another VS. TATA AIG General Insurance Company Ltd. and others, FAO No.4290 of 2018 along with connected case** in favour of the insurance company **vide judgment dated 24.08.2017**. In this view of the matter, I find merit in contention that the insurance company cannot be held liable to pay compensation to legal representatives of a gratuitous passenger carried in a goods vehicle. However, as the claimants have already received compensation assessed by the Tribunal, the insurance company shall be entitled to recover the same not from the claimants but from the insured. In this context, reference can be made to judgment of Hon'ble the Supreme Court **The New India Assurance Company Ltd. VS. Darshana Devi and others, 2008(2) RCR (Civil) 86.**

Perusal of the award would reveal that the insurance company has been given right of recovery against both the owner and driver of the vehicle in question. Indisputably, there is no privity of contract of insurance between the insurer and the driver. Any violation of the terms and conditions of policy that constitutes a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 would not entitle the insurance company to press for right of recovery against driver of the vehicle. In this view of the matter, findings recorded by the Tribunal giving right of recovery against driver of the vehicle in question are liable to be set aside and ordered accordingly.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms.

FAO No.7581 of 2014

The Tribunal has assessed compensation of Rs.7,58,416/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5847/-
2. Multiplier	16
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.7,48,416/-
5. Expenses on funeral	Rs.5000/-
6. Loss of consortium	Rs.5000/-

Counsel for the claimants would state that the Tribunal has not allowed benefit of future prospects.

Counsel for the respondent has supported assessment made by the Tribunal.

Findings of the Tribunal with regard to income of the deceased, multiplier and deduction for personal expenses are liable to be affirmed and ordered accordingly. However, claimants shall be entitled to addition in income for future prospects @ 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**. In this manner, loss of dependency is calculated at Rs.10,47,782/- [(Rs.5847 x 12 x 16) + (40% future prospects) – (1/3rd 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/-

Total compensation is Rs.11,17,782/- and the additional amount is Rs.3,59,366/- (11,17,782 - 7,58,416), payable with interest @7.5% per annum from the date of petition till realization, except for the period of delay of 155 days in refiling and 182 days in filing the appeal. The additional amount shall be shared by two sets of respondent in terms of the award passed by the Tribunal. However, the insurance company of Tata

609 shall not be liable to pay additional amount to the extent of 25% which would be payable by driver and owner of Tata 609 jointly and severally, in view of findings of this Court in FAO No.3696 of 2013.

Disposed of accordingly.

(REKHA MITTAL)
JUDGE

16.08.2018
ashok

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