IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 06.07.2018

FAO No.1611 of 2015 (O&M)

The New India Assurance Co. Ltd. ... Appellant

Versus

Amandeep Kaur and others ... Respondents

FAO No.4931 of 2015 (O&M)

Amandeep Kaur and others ... Appellants

Versus

Bikramjeet Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : None for the claimants.

Mr. Neeraj Khanna, Advocate
for the insurance company.

Ms. Rakhi Sharma, Advocate
for respondents-driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1611 and 4931 of 2015 as these have emerged out of the same award dated 11.11.2014 passed by the Motor Accidents Claims Tribunal, Ferozepur whereby compensation has been awarded on account of death of Buta Singh in a motor vehicular accident on the intervening night of 27/28.03.2013.

FAO No.1611 of 2015 has been filed by New India Assurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

FAO No.1611 of 2015

Counsel for the insurance company has assailed the award primarily on two counts. It is argued that in view of the facts elicited in cross-examination of Jai Pal, alleged eye-witness to the occurrence, it can be safely held that the present is a case of contributory negligence of the two vehicles involved in the accident, therefore, claimants are not entitled to compensation to the extent of negligence attributable to the deceased, driver of canter bearing No.PB-05-N/9067. The second submission made by counsel is that as the insured did not produce route permit, an adverse inference is to be drawn that the insured did not possess a route permit, thus, violated the terms and conditions of policy constituting a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act').

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 whereby it has been held that accident took place due to rash and negligent driving of bus No.PB-02-AS/9987 by its driver, Bikramjeet Singh. It is argued with vehemence that mere fact that the accident was head on collision is not sufficient to accept plea of the insurance company that accident is the result of contributory negligence of drivers of both the vehicles more particularly in the circumstances that no such plea has been raised by driver of the offending vehicle in the written statement who altogether denied the accident.

With regard to route permit, counsel would urge that non-possessing of route permit is not a defence available to insurance company under Section 149(2) of the Act.

Jai Pal, CW1 tendered into evidence his duly sworn affidavit Ex.CW1/A. He has reiterated version of the claimants set up in the last para of the claim application. In his cross examination by counsel for the insurance company before the Tribunal, he would depose that at the time of accident no other person was travelling in the canter except he and the deceased. It was head on collision. He admitted it correct that width of the road where the accident took place was sufficient to cross two buses or trucks simultaneously. He has further admitted that drivers of both the vehicles were able to see each other before the accident. Voluntarily, he stated that accident took place due to rash and negligent driving of bus driver. In his examination-in-chief, he has deposed that the offending vehicle came on the wrong side and struck against the canter resulting in sustaining injuries by Buta Singh, driver of the canter. A conjoint reading of examination-in-chief and cross-examination of Jai Pal does not give even an inkling to support plea of the insurance company that present is a case of contributory negligence or the claimants are not entitled to compensation to the extent, negligence is attributable to the deceased. In this view of the matter, findings recorded by the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

This brings the Court to the plea of non-possessing of route permit qua the offending vehicle. As has been rightly argued by counsel for the claimants, non-possessing of route permit is not a defence available to the insurance company under Section 149(2) of the Act.

No other point has been raised.

For the foregoing reasons, the appeal filed by the insurance company fails and is accordingly dismissed, leaving the parties to bear their own costs.

FAO No.4931 of 2015

The Tribunal has awarded compensation of Rs.10,95,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.7000/-
2. Multiplier	16
3. Deduction for personal expenses	1/4th
4. Loss of dependency	Rs.10,08,000/- (rounded of to Rs.10,10,000)
5. Loss of love and affection	Rs.25,000/-
6. Funeral and last rites	Rs.50,000/-
7. Ambulance expenses	Rs.10,000/-

The deceased was working as a driver on a transport vehicle i.e. canter bearing No.PB-05-N/9067. He sustained injuries when he was driving back to Ferozepur from Fatehgarh Churhian Factory after delivering milk. Taking into consideration the minimum wage of a skilled labour at the relevant time, income of the deceased is assessed at Rs.7400/- per month. The deceased was less than 30 years of age and accordingly admissible multiplier is 17. Claimants shall be entitled to addition in income for future prospects @ 40%.

The application for compensation was filed by the widow, two minor children and parents of the deceased. The Tribunal has rightly applied deduction of $1/4^{th}$ for personal expenses. In this manner, loss of dependency is calculated at Rs.15,85,080/- [(Rs.7400 x 12 x 17) + (40% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that 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.16,55,080/- and the additional amount is Rs.5,60,080/- (16,55,080 – 10,95,000), payable with interest @7.5% per annum from the date of petition till realization, to minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. Interest accruing on FDRs shall be payable to mother of the minors for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

06.07.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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