**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 03.05.2018

1. FAO No.1841 of 2015

Bajaj Allianz General Insurance Company Ltd.

….Appellant

Versus

Indu Yadav and others

….Respondents

2. FAO No.2841 of 2015

Indu Yadav and others

….Appellants

Versus

Sanju and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajneesh Malhotra, Advocate,
for the appellant-Insurance Company (in FAO-1841-2015) and
for respondent No.3 (in FAO-2841-2015).

Mr. J.P. Sharma, Advocate,
for the appellants (in FAO-2841-2015) and
for respondent Nos.1 to 5 (in FAO-1841-2015).

Mr. Vishal Yadav, Advocate,
for respondent Nos.6 and 7 (in FAO-1841-2015).

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RITU BAHRI J. (Oral)

This judgment will dispose of two appeals i.e. FAO No.1841 of 2015 and FAO No.2841 of 2015, together as both the appeals have arisen out of one award.

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Bajaj Allianz General Insurance Company Ltd.-appellant has filed **FAO No.1841 of 2015** against the award dated 01.12.2014 passed by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.16,02,000/- has been awarded in favour of the claimants-respondent Nos. 1 to 5 on account of death of Raj Kumar in a motor vehicular accident which took place on 25.11.2013. Respondent No. 1 is widow, respondent Nos.2 & 3 are children and respondent Nos.4 and 5 are parents of deceased-Raj Kumar.

On the other hand, Indu Yadav etc. have filed **FAO No.2841 of 2015** seeking enhancement of compensation awarded by the Tribunal vide aforesaid Award dated 01.12.2014.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 25.11.2013, Raj Kumar (since deceased) was going towards his village Rabarka on a motorcycle bearing registration No. HR-36-J-1807. When he reached at Toll Plaza, Budhi Bawal near Rajputo Ki Dhani, Bhairuji Mandir, a Canter bearing registration No. HR-47-B-1120 being driven by Sanju-respondent No.6 (respondent No.1 in claim petition) in a rash and negligent manner, came from behind and hit the motorcycle, as a result of which, he (Raj Kumar) fell on the road and received injuries. Jai Singh, who was going on his cycle, took the injured to Government Hospital, where he was declared dead by the doctors on duty. With regard to the accident, FIR No.117 dated 26.11.2013, under Sections 279/304-A IPC was registered at Police Station, Khushkhera against driver-Sanju on the statement of Narender Yadav. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

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On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of offending vehicle by its driver Sanju and thus, returned the finding on issue No.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Jai Singh (PW-3), who was eye witness of the accident. Further, the claimants have also proved on record FIR Ex.P1, coy of report under Section 173 Cr.P.C. Ex.P2, copy of postmortem report Ex.PW1/A and copy of charge sheet Ex.P5.

In the absence of any documentary proof, income of the deceased was assessed as Rs.6000/- per month. In this income, 50% amount was increased on account of future prospects. By doing so, total income of decease came to Rs.9000/- (6000 + 3000). Out of this, 1/4th amount was deducted towards personal expenses of the deceased and dependency of claimants came to Rs.6750/- per month. As per postmortem report Ex.PW1/A, deceased was 28 years of age at the time of accident/death. Accordingly, multiplier of 17 was applied by the Tribunal. After applying the multiplier, dependency of claimants came to Rs.13,77,000/- (6750/- x 12 x 17). Besides this, Rs.1,00,000/- were awarded to claimant No.1 (widow) towards loss of consortium, Rs.25,000/- as funeral expenses and Rs.1,00,000/- towards loss of guidance and social security to the children. Hence, the claimants were found entitled to total compensation of Rs.16,02,000/- along with interest @ 6% per annum from the date of filing of the petition till realization.

Feeling dissatisfied with the impugned award, the Insurance Company as well as claimants have preferred present appeals.

I have heard learned counsel for the parties and perused the

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case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

Learned counsel for the Insurance Company is challenging the finding given by Tribunal on the liability to make payment of compensation on the ground that owner and driver of the Canter, involved in the accident, did not have a route permit to ply the same in Rajasthan.

A perusal of the impugned award shows that the Insurance Company has examined Vijay Kumar, Accountant, RTA Office, Rewari (RW-1), who had brought the permit record register pertaining to vehicle bearing No. HR-47-B-1120. This permit was issued in the name of Parveen son of Ishwar, resident of village Banipur, District Rewari and was valid from 05.02.2013 to 04.02.2018 for Haryana State only. Earlier, Parveen had got issued National Permit No.67/NP/2010 (Ex.RW1/2) in respect of the said vehicle, which was surrendered by him on 05.02.2013. Thereafter, he took permit of Haryana State only.

Keeping in view the above facts, the Tribunal has referred to the judgment passed by this Court in ***National Insurance Company Ltd. vs. Rajender Giri and others***, 2012 (2) RCR (Civil) 183. It was a case, where the route permit issued for plying the vehicle in the State of Rajasthan, but the vehicle was brought in the State of Haryana, where the accident had taken place. It was held that violation of bringing the vehicle in the State of Haryana without a valid permit to ply the same would not amount to violation of conditions of the insurance policy and would not give the insurer a defence under Section 149 (2) of the Act because while granting permit to ply the vehicle in the State of Rajasthan, the Transport Authority

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of Rajasthan had found the vehicle fit for being plied as a goods vehicle.

The above judgment is directly applicable to the facts of the present case. Accordingly, the argument raised by learned counsel for the Insurance Company is rejected. After going through the impugned award, this Court is of the view that the compensation has been rightly assessed and awarded by the Tribunal. The evidence has been appreciated in the right perspective. On a specific query, learned counsel for the Insurance Company has informed that the entire amount of compensation has been paid. At this stage, no ground is made out to interfere in the impugned award.

Resultantly, finding no merits, both the appeals i.e. FAO No.1841 of 2015 and FAO No.2841 of 2015 are dismissed.

(RITU BAHRI)
JUDGE

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

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