IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. XOBJC-88-CII-2013 (O&M) and
FAO-1953-2015(O&M)

Shri Ram General Insurance Ltd.

..... Appellant

Versus

Smt. Bindo Devi and others

..... Respondents

2. FAO-2132-2016(O&M)

Smt. Bindo Devi

..... Appellant

Versus

Nanu Ram and others

..... Respondents

Date of decision: 25.05.2018

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. MB Jain, Advocate
for the appellant-Insurance Company (in FAO-1953-2015) and
for respondent No. 2-Insurance Company (in FAO-2132-2016).

Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for cross-objectors-respondents No. 1 to 3-claimants
(in FAO-1953-2015) and
for respondents No. 3 and 3 (in FAO-2132-2016).

Mr. Jainainder Saini, Advocate
for the appellant (in FAO-2132-2016).

Ms. Seema Pasricha, Advocate
for respondent No. 4 (in FAO-1953-2015) and
for respondent No. 1 (in FAO-2132-2016)
driver and owner of the offending vehicle.

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RAMENDRA JAIN, J. (ORAL)

CM-20140-CII-2016 in XOBJC-251-CII-2016 IN FAO-1953-2015

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed and delay of 235 days in filing XOBJC-251-CII-2016, is condoned.

XOBJC-251-CII-2016 and
FAO Nos. 1953-2015 and 2132-2016

Through this common judgment, two above titled appeals i.e. one filed by the appellant-Insurance Company (FAO-1953-2015) for reduction of compensation, another FAO-2132-2016 by the widow and XOBJC-251-CII-2016 in FAO-1953-2015, by the parents of the deceased-Gurmeet Singh, for enhancement of compensation, against the impugned Award dated 25.08.2014, of the Motor Accident Claims Tribunal, Kaithal (for short-'the Tribunal'), are being disposed of. For brevity, the facts are being extracted from FAO-1953-2015.

Learned counsel for cross-objector-respondents No. 1 to 3-claimants submits that since, widow of deceased, namely, Bindo Devi-respondent No. 1 (in FAO-1953-2015) has filed separate appeal i.e. FAO-2132-2016, therefore, he may be permitted to withdraw XOBJC-251-CII-2016, qua respondent No. 1, only.

Ordered accordingly.

Both the sides are *ad idem* that this appeal has to be decided in accordance to the principles laid down in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.***

As per calculations 'Mark-A' furnished by learned counsel for the cross-objector-respondents No. 1 to 3-claimants, they are entitled to total compensation of ₹14,81,128/-, on account of death of Gurmeet Singh. The learned Tribunal had already awarded a sum of ₹15,35,000/- to cross-objector-respondents No. 1 to 3-claimants. Therefore, the amount of compensation already awarded by the learned Tribunal to cross-objector -respondents No. 1 to 3-claimants is liable to be reduced by ₹53,872/- (₹15,35,000-₹14,81,128=₹53,872/-).

However, learned counsel for the appellant-Insurance Company, has refuted the above calculations 'Mark-A', on the ground that income of the deceased at ₹ 7000/- per month taken by the learned Tribunal is in excess to the minimum wages prescribed by the Haryana Government, for the relevant period. The minimum wages of a skilled workman on the date of death of Gurmeet Singh, were ₹5,357/- per month. Therefore, the learned Tribunal ought to have taken monthly income of deceased-Gurmeet Singh at ₹5,357/- as a skilled workman, for awarding just and fair compensation to the cross-objectors-respondents No. 1 to 3-claimants. That apart, the learned Tribunal has wrongly and illegally awarded ₹2,25,000/- to the cross-objector-respondents No. 1 to 3-claimants under the conventional heads which could not have been awarded more than ₹ 70,000/-, in view of ***Pranay Sethi's case (supra).*** The recovery rights may also be given to the Insurance Company because, the offending vehicle was being driven by respondent No. 4-Nanu Ram (driver and owner) in violation of the terms and conditions of the insurance policy.

Learned counsel for cross-objector-respondents No. 1 to 3-claimants and driver and owner of the offending vehicle, strongly opposing the above submissions of appellant-Insurance Company, pleaded the validity and legality of the impugned Award.

Having given considerable thought to the rival submissions of learned counsel for both the sides, this Court is not inclined to differ with the findings of the learned Tribunal, in respect of income of the deceased taken at ₹ 7000/- per month, on the basis of Collector's rate, prevalent at that time, in view of the fact that deceased-Gurmeet Singh, had not only passed Senior Secondary exam, but also completed his mechanical training in the year 2011, after undergoing two years course vide certificate Ex. P-9 issued by the Department of Industrial Training, Government of Haryana. That apart, according to certificate Ex. P-8, issued by Deputy General Manager (HRM), Hero Motocorp Ltd., which is the most prestigious manufacturer company of motorcycles, deceased-Gurmeet Singh, had completed his apprenticeship in the trade of Motor Mechanic in the year 2012 and had to appear in forth coming All India Trade Test of Apprentices, scheduled to be held in the month of October/November, 2012, before his death. Therefore, the deceased can very well be treated more than a skilled workman, who sometime may be an illiterate person.

However, there is substance in the submission of learned counsel for appellant-Insurance Company that learned Tribunal ought not to have granted beyond ₹ 70,000/- under conventional heads like loss of estate, loss of consortium, funeral expenses etc., in view of ***Pranay Sethi's case (supra).*** Therefore, the amount of ₹ 2,25,000/- granted by the learned Tribunal, under the aforesaid head is reduced to ₹ 70,000/-.

Respondent No. 4, produced his driving licence Ex. R-1. The appellant-Insurance Company did not bring any evidence on the record that driving licence Ex. R-1 was fake or there was any violation of the terms and conditions of the insurance policy, while driving the offending vehicle, except relying upon vague deposition of Rajbir Singh, father of the deceased as PW-2 and mentioning in the FIR Ex. P-1 that 2-3 passengers were travelling in the offending goods vehicle which relates to insignificant aspect of the case, inasmuch, as these witnesses had no personal knowledge about the nature of vehicle as to whether it was a private or goods vehicle. In the absence of any evidence by the appellant-Insurance Company, that the offending vehicle was a goods vehicle, it cannot be said, by any stretch of imagination, that the offending vehicle was being plied in utter violation of the terms and conditions of the insurance policy.

In view of the discussion made above, the calculations 'Mark A' furnished by learned counsel for cross-objector-respondents No. 1 to 3-claimants is accepted and the amount of compensation is reduced from ₹15,35,000/- to ₹14,81,128/-. Consequently, the appeal filed by appellant-Insurance Company (FAO-1953-2018) is partly allowed, whereas the XOBJC-251-CII-2016 filed by respondents No. 2 and 3 (parents of the deceased) and appeal (FAO-2132-2016) filed by widow of deceased-Gurmeet Singh, are rejected.

The learned Tribunal, is directed to disburse the amount of compensation to the tune of ₹4,81,128/- (₹14,81,128 - ₹10,00,000= ₹4,81,128/- as ₹10,00,000/- already deposited and paid to the claimants) to the cross-objectors-respondents No. 1 to 3-claimants, in proportion so arrived at by it, in accordance with law against proper receipt and identification, on deposit of the aforesaid amount by the appellant-Insurance Company, along with up-to-date interest @ 7.5% per annum from the date of filing of claim petition till realization.

It is, however, made clear that non-deposit of the balance amount of compensation within the stipulated period would entail interest @ 12% per annum with quarterly rests.

May 25, 2018 **(RAMENDRA JAIN)**
rishu **JUDGE**

Whether speaking/reasoned **Yes/No**
Whether Reportable **Yes/No**