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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 15.01.2018

1. **FAO No.4209 of 2013 (O&M)**

Didar Singh

... Appellant(s)

Versus

Sarita Devi and others

... Respondent(s)

2. **FAO No.3712 of 2008 (O&M)**

Sarita Devi and others

... Appellant(s)

Versus

Didar Singh and others

... Respondent(s)

3. **FAO No.4657 of 2008 (O&M)**

National Insurance Company Ltd.

... Appellant(s)

Versus

Sarita Devi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.S. Syan, Advocate
for the appellant(s) in FAO No.4209 of 2013 and
for respondent No.1 in FAO-3712-2008 and
for respondent No.4 in FAO-4657-2008.

Mr. Yashpal Thakur, Advocate for
Mr. Gurcharan Singh, Advocate
for the appellant(s) in FAO-3712-2008 and
for respondent Nos.1 to 3 in FAO Nos.4657 of 2008 and
FAO No.4209 of 2013.

Mr. S.S. Sidhu, Advocate
for respondent No.5 in FAO No.4209 of 2013.

Mr. Ashwani Talwar, Advocate
for the National Insurance Company Ltd.
in FAO Nos.4657 and 3712 of 2008.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three appeals bearing ***FAO No.4209 of 2013*** titled as ***"Didar Singh V/s Sarita Devi and others"***, at the instance of the appellant-Didar Singh-Driver against the claimants along with the applications one bearing No.CM-17155-CII-2013 seeking condonation of 1607 days' delay and another bearing No.CM-17154-CII-2013 seeking exemption from filing the statutory amount as required under Section 173 of the Motor Vehicles Act, ***FAO No.3712 of 2008*** titled as ***"Sarita Devi and others V/s Didar Singh and others"*** filed by the appellant(s) seeking enhancement of compensation from ₹3,57,068/- awarded by the Tribunal and ***FAO No.4657 of 2008*** titled as ***"National Insurance Company Ltd. V/s Sarita Devi and others"*** preferred by the appellant-Insurance Company on the premise that the Insurance Company is required to be absolved from payment of the compensation, in the first instance, to the claimants and recover it from the owner of the truck bearing Registration No.PB-12-F-4555, owned by Ram Lal and driven by Didar Singh.

FAO No.4657 of 2008

The claimants instituted the claim petition seeking compensation of ₹ 10,00,000/- with interest @ 24% per annum on demise of Tulsi Yadav, who unfortunately died in a vehicular accident occurred on 23.02.2004, involving the aforementioned truck. The deceased was working as Contractor (Lambardar of labourers) and was earning ₹6,000/- per month. An FIR, in this regard, was registered with the Police Station

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Kharar on 23.02.2004 against the driver of the truck. The Insurance Company in pursuance to the notice received, raised the objections with regard to the breach of the terms and conditions of the Insurance Policy as the Driver-Didar Singh was not having endorsement of heavy transport on the Driving Licence as it was valid for driving the LMV Vehicles and gross unladen weight of the vehicle was 16200 kgs. The Tribunal on the basis of the evidence brought on record gave the recovery rights to the Insurance Company, but did not absolve outrightly.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the Insurance Company submits that in such circumstances, when there was a breach of the terms and conditions of the Insurance Policy, the Insurance Company cannot be called upon to pay the compensation and the liability should have totally been fastened upon the owner and the driver.

I am afraid that the aforementioned argument is no longer sustainable in view of the *ratio decidendi* culled out by Hon'ble Supreme Court in ***"National Insurance Compamny Ltd. V/s Swaran Singh and others" 2004(2) RCR (Civil) 114***, wherein, the Apex Court kept the issue open as to whether the Insurance Company can seek the outright absolvement or not. So long as the law in vogue is that the Insurance Company in view of the provisions of Section 149(5) of the Motor Vehicles Act is required to pay the compensation to the claimants and then recover from the owner and driver by seeking execution of the same award instead of filing a separate petition. For the sake of brevity, the provisions of Section 149(5) of the Act reads thus:-

"(5) *If the amount which an insurer becomes liable under*

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this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person."

Keeping in view the aforementioned facts, there is no merit and force in the appeal bearing ***FAO No.4657 of 2008*** filed at the instance of the Insurance Company, accordingly, the same is dismissed by upholding the findings of the Tribunal regarding recovery rights.

FAO No.4209 of 2013

The present appeal has been filed by the appellant-Driver accompanied by the applications one bearing No.CM-17155-CII-2013 seeking condonation of 1607 days' delay and another bearing No.CM-17154-CII-2013 seeking exemption from filing the statutory amount as required under Section 173 of the Motor Vehicles Act. The delay in filing the appeal is unexplained and without any bases, much less, the statutory amount as required under Section 173 of the Act has not been paid.

Order dated 14.12.2017 reveal that learned counsel for the appellant had to deposit the statutory amount of ₹25,000/- within three weeks and despite that, no statutory amount has been deposited.

Even otherwise on merits of the appeal, the argument of the owner-driver that the unladen weight of the vehicle as per the registration certificate was 16200 kg, would not come to the rescue in view of the definition of Light Motor Vehicle enshrined in sub-Section 21 of Section 2 of the Act, which reads thus:-

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"(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms."

Accordingly, the appeal bearing ***FAO No.4209 of 2013*** filed at the instance of the driver is dismissed on merits as well as on ground of limitation.

FAO No.3712 of 2008

As regards the appeal of claimants seeking enhancement of compensation, there is a scope of enhancement as the compensation to the tune of ₹3,57,068/- is on lower side and accordingly, I take the income of the deceased as ₹2,500/- as taken by the Tribunal and provide 40% future prospects and apply a multiplier of '17', much less, deduction of 1/3rd to assess the loss of dependency as ₹4,76,000/-. I will further add to it ₹70,000/- towards conventional heads i.e. loss of consortium, loss of estate and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in ***SLP (Civil) No.25590 of 2014*** titled as ***"National Insurance Company Ltd. V/s Pranay Sethi and others".***

In all the compensation payable shall be ₹5,46,000/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the appeal till its realization. The enhanced amount shall be distributed amongst the appellants-claimants in the ratio of 2:2:1. The liability shall remain the same as has already been determined by the Tribunal.

The award passed by the Tribunal is modified to the above

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extent and the appeal bearing ***FAO No.3712 of 2008*** stands allowed.

(AMIT RAWAL)
JUDGE

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✓
Whether speaking/reasoned **Yes/ No**

✓
Whether Reportable **Yes/ No**

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