IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 17.05.2018

FAO 4373 of 2014 (O&M)

Gurjit Singh and another .... *Appellants*

Versus

Smt. Parkasho alias Patasho Devi and others ....*Respondents*

FAO 5838 of 2014 (O&M)

Gurjit Singh and another .... *Appellants*

Versus

Smt. Babli Devi and others ....*Respondents*

FAO 4721 of 2014 (O&M)

Smt. Parkasho alias Patasho Devi and others .... *Appellants*

Versus

Gurjit Singh and others ....*Respondents*

FAO 4722 of 2014 (O&M)

Smt. Babli Devi and another .... *Appellants*

Versus

Gurjit Singh and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.Raj Kapoor Malik, Advocate
for the appellants (FAO NO. 4373 and5838 of 2014)
for respondents No. 1 and 2 (FAO No. 4721 and 4722 of 2014)

Mr. Vinod K Kanwal, Advocate
for the appellants (FAO No. 4721 and 4722 of 2014)
for respondents No. 1 and 2 (FAO 4373 and 5838 of 2014)

Mr. Vinod Chaudhri, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

This order shall dispose of all the aforementioned appeals as these have emerged out of the same award dated 16.01.2014 passed by the

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Motor Accidents Claims Tribunal, Kaithal (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded on account of death of Vikram Singh son of Gurdev Singh and Virender Singh son of Parkash Chand in a motor vehicular accident that took place on 01.11.2012.

FAO Nos. 4373 and 5838 of 2014 have been filed by Gurjit Singh and another (owner and driver of offending Tractor Trailer No. HR 34-C-0648) whereas FAO Nos. 4721 and 4722 of 2014 have been filed by the claimants seeking enhancement of compensation on account of death of Vikram Singh son of Gurdev Singh and Virender Singh son of Parkash Chand, respectively.

FAO Nos. 4373 and 5838 of 2014

Counsel for the appellants would urge that the Tribunal has grossly erred by recording findings in para 21 of the award on the basis whereof, the insurance company has been exonerated of liability to pay compensation. It is argued with vehemence that in the written statement filed by the insurance company, no such plea was raised that vehicle in question was not insured with the United India Insurance Company Limited on the date of accident i.e. 01.11.2012 though the insurance company raised a usual plea in regard to violation of terms and conditions of the policy. It is further argued that the insurance company did not examine a witness to say something about correctness and legality of cover note Ex. R5 or circumstances under which the policy was issued with effect from 05.12.2012 to 28.11.2013. According to counsel, as per general practice, a policy is issued by the insurer for a period of complete year but in the present case, it is short by seven days. It is further argued that the Tribunal did not put an effort to know as to why the policy issued by the company is

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not in consonance with the cover note Ex.R5 i.e. effective from 29.10.2012 to 28.10.2013. In addition, it is argued that as the accident took place 3-4 days after 29.10.2012 and the insurance policy could be issued before expiry of 60 days from the date of issuance of cover note, the company issued the policy with effect from 05.12.2012 with a clear intent to escape liability to indemnify the insured.

With regard to validity period of the cover note, counsel would make reference to Rule 142 of the Central Motors Vehicle Rules 1989 which says that every cover note issued by the authorized insurer shall be in Form 52, valid for a period of 60 days from the date of its issue and the insurer shall issue a policy before the date of expiry of the cover note. The last submission made by counsel is that learned Tribunal merely by relying upon the insurance policy, produced by the insurance company has proceeded to record a finding that the cover note appears to be forged and fabricated document, prepared in connivance of respondents No. 1 and 2, without there being any material on record to justify such finding denying right of indemnification to the insured.

Counsel representing the insurance company, on the other hand, has supported findings of the Tribunal recorded in para 21 of the award with the submission that though the insurance company did not examine a witness to depose on the basis of record maintained in the office of the Company but this cover note Ex.R5 was not issued by an authorized representative of the company. It is further argued that in para 17 of the written statement, a specific plea was raised by the insurance company that the insurance company has not been supplied with copies of documents and it reserves right to file written statement with better particulars in future,

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therefore, the insurance company never admitted that the vehicle in question was insured with the company on the date of the occurrence.

Be that as it may, it is undisputed position of the case that when the proceedings remained pending before the Tribunal, the insurance company neither called upon the insured to produce document(s) of insurance nor raised an issue that cover note marked Ex R5 is the result of forgery and fabrication. There is no denial that the insurance company did not examine a witness to prove as to why the policy was issued with effect from 05.12.2012 to 28.11.2013. In absence of any plea of the insurance company at any stage of the proceedings prior to advancing arguments that the vehicle was not insured on the date of occurrence much less cover note being forged and fabricated, I find merit in contention of counsel for the appellants that findings recorded by the Tribunal in para 21 of the award cannot be allowed to sustain and liable to be set aside. As has been rightly argued by counsel for the appellants that the cover note is valid for a period of 60 days from the date of its issue and policy of insurance shall be issued before the date of expiry of cover note. Unfortunately, in the present case, the accident took place on 01.11.2012, just few days from the date of issuance of cover note. In the given scenario, the insurance company cannot escape its liability to pay compensation on the basis of cover note Ex.R5. Accordingly, findings recorded by the Tribunal in para 21 of the award and exonerating the insurance company of liability to pay compensation are ordered to be set aside. However, the insurance company may take recourse to appropriate proceedings, if it can prove that there is illegality committed by an agent of the company.

With these observations, both the appeals (FAO Nos. 4373 and

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5838 of 2014) are allowed holding the insurance company jointly and severally liable to pay compensation to the claimants.

FAO No. 4721 of 2014

The Tribunal has assessed compensation of Rs.4,53,200.00, detailed hereunder:-

Monthly income of the deceased	Rs.4,200.00
Deduction for personal expenses	50%
Multiplier	16
Loss of dependency	Rs.4,03,200.00
Loss of consortium	Rs.25,000.00
Funeral expenses	Rs.25,000.00

As the deceased was 17 years old, taking minimum wage of unskilled labour in view, income of the deceased is assessed at Rs.5,000.00 per month. The claimants shall be entitled to addition in income for future prospects at the rate of 40%. Admissible multiplier is 18. Deduction for personal expenses allowed by the Tribunal is affirmed. In this view of the matter, loss of dependency comes to Rs.7,56,000.00 (Rs.10,80,000.00 *i.e* Rs.5,000 x 12 x 18 + Rs.4,32,000.00 (40% future prospects) – Rs.7,56,000.00 (50% deduction).

Under conventional heads, compensation awarded is restricted to Rs.30,000.00, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***, detailed hereunder:-

Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.7,86,000.00 (Rs.7,56,000.00 + Rs.30,000.00) and additional amount is Rs.3,32,800.00 (Rs.7,86,000.00 - Rs.4,53,200.00), payable with interest at the rate of 7.5% per annum from

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the date of petition till realization to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO No. 4722 of 2014

In view of findings recorded in FAO No. 4721 of 2014, the claimants shall be entitled to compensation of Rs.7,86,000.00 and additional amount is Rs.3,32,800.00 (Rs.7,86,000.00 - Rs.4,53,200.00), payable with interest at the rate of 7.5% per annum from the date of petition till realization to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

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

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