IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 17.05.2018

FAO-4837-2014 (O&M)

SUMAN DEVI AND ORS ... Appellants

Versus

GOLDY AND ORS ... Respondents

FAO-8951-2014 (O&M)

SHRI RAM GENERAL INSURANCE CO. LTD. ... Appellant

Versus

SUMAN DEVI AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Namit Khurana, Advocate
for the claimants.

Mr. Arun Sharma, Advocate
for the insurance company.

Mr. Anuj Baliyan, Advocate for
Mr. S.S. Nara, Advocate
for the driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4837 and 8951 of 2014 as these have emanated from the same award dated 05.02.2014 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri whereby compensation has been awarded on account of death of Ram Niwas in a motor vehicular accident that took place on 02.11.2011 due to rash and negligent driving of motorcycle bearing No.HR-02-N-1072 by its driver, Goldy.

FAO No.4837 of 2014 has been filed by the claimants seeking enhancement of compensation whereas the second appeal has been preferred by Shri Ram General Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company').

FAO No.4837 of 2014

The Tribunal has assessed compensation of Rs.6,41,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5000/-
2. Multiplier	13
3. Deduction for personal expenses	$1/5^{th}$
4. Loss of dependency	Rs.6,24,000/-
5. Expenses on funeral	Rs.2000/-
6. Loss of consortium	Rs.10,000/-
7. Transportation charges	Rs.5000/-

As per findings recorded by the Tribunal, deceased was 46 years old and accordingly multiplier of 13 has been applied. Claimants shall be entitled to benefit of future prospects @ 25%. Multiplier applied by the Tribunal is affirmed.

The application for compensation has been filed by the widow, four children and parents of deceased Ram Niwas. There is no evidence on record, if father of the deceased had any disability to impair his capacity to work and earn livelihood for his family. Under the circumstances, compensation for death of Ram Niwas is available to his widow, four children and mother namely Smt. Angoori Devi. That being so, deduction for personal expenses would be 1/4th. In this manner, loss of dependency comes to Rs.7,31,250/- [(Rs.5000 x 12 x 13) + (25% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, 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.8,01,250/- and the additional amount is Rs.1,60,250/- (8,01,250 – 6,41,000), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased. The liability to pay compensation would be in terms of decision in FAO No.8951 of 2014.

The appeal is partly allowed in the aforesaid terms.

FAO No.8951 of 2014

The sole submission made by counsel for the insurance company is that as there was no contract of insurance between the insured and the insurance company, the insurance company is not liable to pay compensation and has wrongly been fastened with liability on the basis of document Mark A produced before the Tribunal.

Counsel representing owner of the offending vehicle has supported findings of the Tribunal holding insurance company jointly and severally liable to pay compensation by way of indemnification of the insured. It is argued with vehemence that document Mark A bears the serial number of insurance company as has been admitted by Krishan Murari RW1, Claim Manager of the insurance company. In addition, it is argued that in the written statement filed by the insurance company, no such plea has been raised that the vehicle in question was not insured with the insurance company, therefore, insurance company cannot escape liability to pay compensation.

The owner of the vehicle did not appear in the witness box to establish that the vehicle in question was insured with the insurance company. Even respondents No.1 and 2 before the Tribunal did not tender any document in evidence. However, during cross examination of Krishan Murari, Claim Manager of the insurance company examined as RW1, he was confronted with document Mark A. A relevant extract from his cross examination reads as follows:-

> *"Mark A is the scan copy and the same has not been issued by our company. Mark A is the proposal form of our company. Cover note and proposal form are separate documents but bear same number. It is correct the serial numbers in a book are always in a sequence. Mark A bears the serial number of our company. I can't tell about the seal on the said document as this is not the original copy. It can't say whether document Mark A bears original signatures or are scanned one. My vision*

> *is not weak. On receipt document Mark A we did not initiate any action against signatory of this document. It is wrong to suggest that Mark A is original cover note issued by the competent authorised agent of our company and I have deposed falsely only to avoid the liability of the company."*

Assuming that the document Mark A had been issued by an agent of the insurance company but the same is only a proposal form whereby offer was made by the proposer for getting the vehicle insured. No evidence has been adduced by the owner that this proposal ever converted into a concluded contract between the owner and the insurance company. No materials have been brought on record that amount of premium was paid by the owner or credited in the account of insurance company. The learned Tribunal failed to appreciate the document Mark A in right perspective and committed a gross error by holding that the insurance company is liable to pay compensation despite there being no contract between the insured and the insurance company. As such, there is no question of insurance company being liable to indemnify owner of the vehicle or its being jointly and severally liable to pay compensation to the claimants. In this view of the matter, findings recorded by the Tribunal holding the insurance company liable to pay compensation cannot be allowed to sustain and liable to be set aside. As a result, the insurance company is exonerated of liability to pay compensation to the claimants.

For the foregoing reasons, the appeal is allowed in the aforesaid terms. The insurance company shall not be liable to pay compensation. However, it is clarified that liability to pay compensation fastened against the driver and owner of the offending vehicle shall remain intact. If the insurance company had already paid compensation to the claimants, it shall be entitled to recover the same from owner of the vehicle in place of the claimants.

Disposed of accordingly.

17.05.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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