216 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 3606 of 2015(O&M)
Date of decision : 06.09.2018

United India Insurance Co.Ltd. .... Appellant

versus

Sandeep and others .... Respondents

2. FAO No. 4813 of 2015(O&M)

Ramrati and others .... Appellants

versus

Sandeep and others .... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

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Present: Mr.Pardeep Goyal, Advocate
for the appellant (in FAO-3606 of 2015)
and for respondent No.3 (in FAO-4813-2015).

Mr.R.A.Sheoran, Advocate
for respondent No.2 in both the appeals.

Mr.Sunny Bhardwaj, Advocate
for the appellants (in FAO-4813-2015)
and for respondents No. 3 to 6(in FAO-3606-2015).

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<u>REKHA MITTAL , J. (ORAL)</u>

This order will dispose of FAO Nos.3606 and 4813 of 2015 as these have emerged out of the same award dated 7.02.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been awarded on account of death of Jai Parkash in a motor vehicular accident that took place on 14.03.2014.

FAO No. 3606 of 2015 has been filed by the United India Insurance Company Ltd.(hereinafter to be referred as the 'insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

FAO-3606-2015

The sole submission made by counsel for the appellant is that as the offending vehicle bearing No. HR-61/3635 was being used for hire or reward in violation of the policy conditions, the insurance company is entitle to be exonerated of liability to pay compensation or right of recovery against the insured after payment of compensation to the claimants. To bring home his contention, counsel would urge that a specific plea was raised in para 8 of the written statement that deceased along with other passengers was travelling as paid passenger against the terms and conditions of the insurance policy. It is argued that a careful and detailed appreciation of facts elicited in cross-examination of Sona Devi-injured (PW-3) and Sandeep, driver of the offending vehicle (RW-2) would make it evident that the vehicle was being used as a commercial vehicle in violation of the policy conditions.

Counsel representing respondent No.2, registered owner of the vehicle in question, has refuted contentions of the insurance company by submitting that neither in the testimony of Sona Devi (PW-3) nor in cross-examination of Sandeep (RW-1), it has been brought on record that the deceased and other passengers were travelling in the vehicle on payment of any charges.

Indisputably, the insurance company has raised a specific plea that the deceased along with other passengers was travelling in the vehicle in question as paid passenger.

Sona Devi, one of the passengers who sustained injuries in the occurrence, appeared in the witness box and tendered into evidence her affidavit Ex.PW3/A. A relevant extract from her cross-examination reads as follows:-

> *" I had boarded in the jeep from Rohtak Gate, Bhiwani. 2 or 3 passengers also boarded from Hansi Chowk in the jeep. I do not know the passengers travelling in the jeep. I do not know the fare from Bhiwani to village Dhanana. I used to visit Dhanana regularly as in Dhanana is my parental home. The fare from Bhiwani to Dhanana was Rs.10/- at that time. I do not know the owner of jeep. The driver of the jeep was Sandeep. I do not know name of his father. I do not know how many brothers and sisters are of Sandeep driver. I became unconscious just after the accident."*

An extract from cross examination of Sandeep-RW1 relevant in the present context, reads as follows:-

> *"There were 2/3 passengers in the jeep. Jitender is owner of jeep in question. Respondent No.2, owner of jeep used to give me Rs. 8000/- per month. He pay me from the earning of jeep. The jeep used to earn Rs. 15,000/16,000/- per month. The jeep is being plied on booking etc. and from this work there is earning of the jeep. I do not know PW3 Sona Devi. I am resident of village Banda Heri."*

On due consideration of the facts elicited in cross examination of Sona Devi and Sandeep, it can safely be gathered that passengers were being picked up by the jeep driver from different locations. Sona Devi boarded the jeep from Rohtak Gate, Bhiwani. 2/3 passengers boarded the jeep from Hansi Chowk. Sona Devi had no acquaintance with the jeep driver nor the jeep driver knew Sona Devi before hand. From the facts extracted herein-before it can safely be held that the vehicle in question was being used as a commercial vehicle for carrying passengers on hire or reward and the same was a source of income for owner of the jeep out of which a sum of Rs.8000/-per month was paid to driver Sandeep. In this view of the matter, I find merit in contention of the insurance company that the vehicle in question was being used for hire or reward in violation of the policy conditions. That being so, the insurance company would have right of recovery against the insured after payment of compensation to the claimants.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms.

FAO-4813-2015

The Tribunal has awarded compensation of ₹3,52,640/-, detailed hereunder:-

1. Monthly income of the deceased	₹ 6160/-
2. Deduction for personal expenses	50%
3. Multiplier	9
4. Loss of dependency	₹ 3,32,640/-
6. Loss of love and affection, loss of estate and funeral expenses	₹ 20,000/-

Counsel for the claimants would urge that the Tribunal has wrongly applied multiplier of 9 as against 11, available in view of age of the deceased recorded in the ration card. Adequate compensation may be allowed under conventional heads.

Counsel representing the respondents would urge that the deceased was more than 60 years of age and accordingly an appropriate multiplier may be applied.

The claimants have placed on record Voter Identity Card of the deceased issued by the Election Commission of India. As per the document mark-C, deceased was 43 years old as on 01.01.1994, therefore, he was in the age bracket of 61-65 years at the time of occurrence. The admissible multiplier, in the circumstances, would be 7.

The Tribunal has allowed deduction for personal expenses to the extent of 50%. The application for compensation has been filed by the widow and three adult sons of the deceased. The Tribunal has held that only widow of the deceased was dependent upon his earning. Even if widow was the sole dependent on income of the deceased, admissible deduction for personal expenses would be 1/3rd. In this context, reference can be made to Division Bench judgment of the Madhya Pradesh High Court **Anurag Jain and others vs. Ramveer Singh and others, 2007 (4) TAC 279,** judgment of **Karnataka High Court Ningappa Ramanna Kori and another vs. Tamil Nadu State Transport (Madurai) Ltd., 2016 AAC 1629** and judgment of this Court **Pawan Kumar and others vs. Ramesh Kumar and others, 2016(1) Law Herald 758**. In this manner, loss of dependency is calculated at ₹ 3,44,960/- [(₹ 6160 x 12 x 7) -(1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitled to ₹ 70,000/- , detailed hereunder:-

1. Loss of consortium	₹ 40,000/-
2. Loss of estate	₹ 15, 000/-
3. Funeral expenses	₹ 15, 000/-

Total compensation is ₹ 4,14,960/- and the additional amount is ₹ 62, 320/- (4,14,960-3,52,640) payable with interest at the rate of 7.5% p.a. from the date of petition till realisation. All the respondents before the Tribunal shall be jointly and severally liable to pay compensation to the claimants but the insurance company shall have right of recovery against the insured after payment of compensation to the claimants in terms of order of even date passed in FAO-3606-2015.

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

06.09.2018
sunita

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