**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision:17.7.2018

1. **FAO No.3643 of 2015(O&M)**

Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Mukesh Rana and others .....Respondents

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Ms. Rajni Maurya, Advocate for
Mr. Naveen Batra, Advocate for respondents No.1 and 2.

Mr. D.P.S. Randhawa, Advocate for respondent No.3.

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2. **FAO No.3840 of 2015(O&M)**

Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Sunita Devi and another .....Respondents

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Mr. D.P.S. Randhawa, Advocate for respondent No.2.

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3. **FAO No.5866 of 2016(O&M)**

Mukesh Rana and another …..Appellants

VERSUS

Lakhvir Singh and another .....Respondents

Present: Ms. Rajni Maurya, Advocate for
Mr. Naveen Batra, Advocate for the appellant.

Mr. D.P.S. Randhawa, Advocate for respondent No.1.

Ms. Vandana Malhotra, Advocate for respondent No.2.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J.

This order will dispose of FAO Nos.3643, 3840 of 2015 and 5866 of 2016 as these have emerged out of the same accident that took place on 28.08.2013 wherein Jaspal Saini – driver, Amit Bhatnagar and Vikas Rana pillion riders on motorcycle No.PB-24B-8800 succumbed to the injuries out of use of motor vehicle aforesaid.

FAO No.3643 of 2015 has been filed by Oriental Insurance Company (hereinafter to be referred as 'the insurance company') to assail the award allowed in favour of Mukesh Rana and others on account of death of Vikas Rana whereas FAO No.5866 of 2016 has been filed by claimants Mukesh Rana and another seeking enhancement of compensation. FAO No.3840 of 2015 has been filed by the insurance company against compensation allowed in regard to death of Amit Bhatnagar.

FAO Nos.3643 of 2015 and 5866 of 2016

Counsel for the insurance company would urge that driving licence, if any, possessed by Jaspal Saini, driver of ill-fated motorcycle No.PB-24B-8800 has not been produced either by the claimants qua death of Jaspal Saini or by registered owner of the vehicle in question, therefore, the insured had failed to discharge its primary obligation that the vehicle was driven by a person holding a valid licence or he was not disqualified from having licence. It is argued with vehemence that the Motor Accidents Claims Tribunal, Ropar (in short 'the Tribunal') has failed to appreciate this aspect of the matter in right perspective by holding that the insurance company has failed to prove that Jaspal Saini did not have driving licence on the date of accident. It is further submitted that the insurance company is entitled to be exonerated of liability to pay compensation or in the alternative may be allowed right of recovery against the insured after payment of compensation to the claimants.

Another submission made by counsel is that as the motorcycle is meant for carrying one person on its pillion seat besides the driver and two persons were being carried on the pillion seat, insurance company is entitled to right of recovery against the insured qua one of the travellers on the pillion seat. In support of her contention, she has relied upon judgment of Hon'ble the Supreme Court **United India Insurance Company Ltd. Vs. K.M. Poonam and others, 2011 (2) RCR (Civil) 194**. Counsel has made a vain attempt to argue that as three persons were travelling on a motorcycle in violation of the provisions of Section 128 of the Motor Vehicles Act, 1988 (in short 'the Act'), the insurance company is not liable to pay compensation.

Counsel representing the claimants would urge that claimants are entitled to get compensation by allowing benefit of addition in income for future prospects, appropriate multiplier and adequate compensation under conventional heads.

Counsel representing owner of the vehicle has supported findings of the Tribunal that the insurance company has failed to discharge onus of issue No.3 with regard to the driver not possessing a valid and effective licence, therefore, the insurance company can neither seek exoneration nor press for right of recovery against the insured.

The Tribunal framed issue No.3 to the following effect:-

"Whether deceased was not having a valid and effective driving licence at the time of alleged accident? If so, its effect? OPR"

Indisputably, the vehicle was driven by Jaspal Saini and Amit Bhatnagar and Vikas Rana were travelling on its pillion seat when unfortunately the motorcycle fell into the ditches and all three of them died. The driving licence of Jaspal Saini was not produced on record by Lakhvir Singh owner/insured of the vehicle in question. He has also failed to provide particulars of the driving licence, if any, possessed by Jaspal Saini. As the insured has failed to prove that Jaspal Saini was possessing a driving licence, the insured has failed to discharge its primary obligation to ensure that he had given the vehicle for driving to a person who was holding a licence. On the other hand, once the insured has not provided particulars of driving licence of Jaspal Saini, the insurance company has been deprived of a right to prove that licence possessed by Jaspal Saini is not valid and effective. In this view of the matter, I find merit in contention of the insurance company that the insurance company is entitled to right of recovery against the insured after payment of compensation to the claimants in this case. In this context, reference can be made to latest judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018 (1) PLR 425**. Since the insurance company has been given right of recovery against the insured, in view of discussion made hereinbefore, there is no need to advert to the issue of overloading or carrying more passengers than capacity of the vehicle in question because even in that eventuality, at best, the insurance company can be given right of recovery against the insured after payment to the claimants as has been so held in **K.M. Poonam and others case** (supra) relied upon by counsel for the insurance company. So far as the plea of the insurance company with regard to there being three persons travelling on the motorcycle in violation of Section 128 of the Act is concerned, the said plea is relevant only in the context of negligence attributable to a person or a vehicle involved in the occurrence. In the instant case, application for compensation has been filed under Section 163-A of the Act. A three-Judge Bench of Hon'ble the Supreme Court in **United India Insurance Company Ltd., Vs. Sunil Kumar and another, 2018 (1) RCR (Civil) 680** has answered the reference/question of law that in a claim proceeding under Section 163-A of the Act, it is not open for the insurer to raise the defence/plea of negligence. In this view of the matter, contention raised by counsel for the insurance company in this regard is misconceived and liable to be rejected.

This brings the Court to plea of the claimants for enhancement of compensation. In a claim under Section 163-A of the Act, compensation is to be assessed on the basis of structured formula envisaged in the Second Schedule appended to Section 163-A of the Act. The Tribunal has rightly assessed income of the deceased and so also deduction for personal expenses to the extent of $1/3^{rd}$. The deceased was 24 years old at the time of occurrence. Admissible multiplier in the given scenario would be 17. In this manner, loss of dependency is calculated at Rs.4,08,000/- (Rs.6,12,000/- (Rs.3,000/- x 12x 17) – Rs.2,04,000/- ($1/3^{rd}$ deduction towards personal expenses)].

Compensation awarded by the Tribunal under conventional heads is in complete consonance with what has been provided for in the Second Schedule.

In view of the above, total compensation comes to Rs.4,12,500/- and additional amount is Rs.96,000/- (Rs.4,12,500/- - Rs.3,16,500/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to mother of the deceased

For the foregoing reasons, the appeals are disposed of in the aforesaid terms. The insurance company shall be liable to pay compensation to the claimants but would have right of recovery against the insured of motorcycle in question.

FAO No.3840 of 2015

In view of observations recorded in FAO No.3643 of 2015 the insurance company shall have right of recovery against the insured after payment of compensation to the claimants.

The Tribunal has assessed compensation of Rs.3,40,500/-, detailed hereunder:-

Monthly income of the deceased	Rs.3000/-
Deduction for personal expenses	$1/3^{rd}$
Multiplier	14
Loss of dependency	Rs.3,36,000/-
Funeral expenses	Rs.2000/-
Loss of estate	Rs.2500/-

Income of the deceased and deduction for personal expenses allowed by the Tribunal are correct and affirmed. However, in view of discussion made hereinbefore, in FAO No.5866 of 2016, admissible multiplier would be 17 as the deceased was 23 years old. In this manner, loss of dependency is calculated at Rs.4,08,000/- [Rs.6,12,000/- (Rs.3,000/- x 12 x 17) – Rs.2,04,000/- (1/3rd deduction towards personal expenses).

Compensation awarded by the Tribunal under conventional heads is in complete consonance with what has been provided for in the Second Schedule.

In view of the above, total compensation comes to Rs.4,12,500/- and additional amount is Rs.72,000/- (Rs.4,12,500/- - Rs.3,40,500/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to mother of the deceased

For the foregoing reasons, the appeal filed by the insurance company stands disposed of in the aforesaid terms. The insurance company shall be liable to pay compensation to the claimants but would have right of recovery against the insured after satisfying the award.

JULY 17, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no