IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 18.05.2018

FAO No.2764 of 2016 (O&M)

Lakhvir Kaur and others ... Appellants

Versus

Vijay Kumar and others ... Respondents

FAO No.4094 of 2016 (O&M)

Vijay Kumar and another ... Appellants

Versus

Lakhvir Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : None for the appellants
in FAO No.2764 of 2016.

Mr. Manish Prabhkar, Advocate for
Mr. Ashok Giri, Advocate
for the appellants in FAO No.4094 of 2016.

Mr. Pardeep Goyal, Advocate and
Mr. Vinod Gupta, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2764 and 4094 of 2016 as these have emerged out of the same award dated 08.12.2015 passed by the Motor Accidents Claims Tribunal, Ropar whereby compensation has been awarded on account of death of Kuldeep Singh in a motor vehicular accident that took place on 06.10.2011.

FAO No.2764 of 2016 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been preferred by owner and driver of offending vehicle to assail recovery right given in favour of the insurance company.

FAO No.2764 of 2016

The Tribunal has assessed compensation of Rs.3,12,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.3900/-
2. Multiplier	10
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.3,12,000/-

Income of the deceased has been assessed by the Tribunal on the basis of statement of Rajan Kumar PW4, Junior Executive Cheema Boiler Ltd., Kurali and the same is affirmed. Deduction for personal expenses allowed by the Tribunal is affirmed. The Tribunal has held that the deceased was aged about 50 years at the time of death but applied multiplier of 10. The Tribunal did not bother to examine that it has an obligation to assess just and reasonable compensation in view of the provisions of Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') and plethora of judgments of Hon'ble the Supreme Court on the issue. It is not understandable as to why the Tribunal has even ignored the landmark judgments of Hon'ble the Apex Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77, Reshma Kumari**

and others Vs. Madan Mohan and another, 2013(2) RCR (Civil) 660 and **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** while allowing multiplier rather justified adopting multiplier of 10 by saying that both the parties have conceded to the plea that multiplier of 10 would be applicable. Even a concession recorded by a counsel contrary to what is available to the claimants cannot create a bar against allowing just and reasonable compensation. The way Tribunal has proceeded to allow multiplier of 10 as against admissible multiplier of 13 for computing loss of dependency deserves condemnation. Claimants shall be entitled to multiplier of 13 and benefit of future prospects @ 25%. In this manner, loss of dependency comes to Rs.5,07,000/- (Rs.3900 x 12 x 13) + (25% future prospects) – (1/3rd deduction for personal expenses)

In the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**, claimants shall be entitled to Rs.60,000/- under conventional heads, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss to estate	Rs.15,000/-
3. Funeral expenses	Rs.5000/-

Total compensation is Rs.5,67,000/- and the additional amount is Rs.2,55,000/- (5,67,000 – 3,12,000). Interest @ 7.5% per annum shall be payable on the amount of Rs.5,67,000/- from the date of petition till realization, except for the period when the petition remained dismissed for non-prosecution.

The appeal is partly allowed in the aforesaid terms.

FAO No.4094 of 2016

The Tribunal has answered issue No.3 against driver and owner of the offending vehicle and in favour of the insurance company on the basis whereof the insurance company has been given right of recovery after payment of compensation to the claimants.

Issue No.3 framed by the Tribunal reads as under:-

> *"Whether respondent No.1 was not holding a valid certificate at the time of accident? OPR3"*

The Tribunal in para 12 of the award has held that fitness certificate produced by respondent No.2 has been found to be fake as there is no entry in the records of concerned office at Faridabad.

The Tribunal has committed a serious error by holding that the insured is guilty of violating terms and conditions of the insurance policy merely because the fitness certificate has been found to be fake. The Tribunal was presided over by an officer of the rank of Additional District Judge but she did not bother to examine the provisions of Section 149 of the Act that provides for defences available to the insurance company in a claim where notice of the application has been issued to the insurer. Undenyingly, non-possessing of fitness certificate is not a defence available to the insurance company either to escape liability to pay compensation or press for right of recovery against the insured. In this view of the matter, it can be safely held that findings of the Tribunal on issue No.3 are the result of complete non-application of mind and liable to be set aside. As a consequence, the insurance company shall be jointly and severally liable to pay compensation without any recovery right.

For the foregoing reasons, the appeal is partly allowed and the respondents before the Tribunal shall be jointly and severally liable to pay compensation to the claimants.

A copy of the judgment be sent to the Tribunal concerned for guidance in future.

(REKHA MITTAL)
JUDGE

18.05.2018
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No