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

Date of decision: 16.2.2018

1. **FAO No.6423 of 2013(O&M)**

Sunil Kumar and another …..Appellants

VERSUS

Cholamandlam M.S. General Insurance Co. Ltd. and others

.....Respondents

Present: Mr. Sandeep Yadav, Advocate for the appellants.

Mr. Punit Jain, Advocate for respondent No.1.

None for respondents No.2 to 5.

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2. **FAO No.8333 of 2014(O&M)**

Madhu Bala and others …..Appellants

VERSUS

Sukhbir and others .....Respondents

Present: Mr. A.K. Yadav, Advocate for the appellants.

None for respondents No.1 and 2.

Mr. Punit Jain, Advocate for respondent No.3.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.6423 of 2013 and 8333 of 2014 as these have emerged out of the same award dated 14.10.2013 passed by the Motor Accidents Claims Tribunal, Rewari (in short 'the Tribunal') whereby compensation has been awarded on account of death of Satish Kumar in a motor vehicular accident that took place on 26.01.2012.

FAO No.6423 of 2013 has been filed by owner and driver of the offending vehicle i.e. Tractor No.HR36-J-8477 whereas FAO No.8333 of 2014 has been filed by the claimants seeking enhancement of compensation. For the sake of convenience, parties shall be referred to as the 'appellants' (owner and driver), claimants and the insurance company.

Counsel for the appellants has assailed findings of the Tribunal whereby it has been held that the vehicle in question which was registered for agricultural purpose was being used for commercial purpose for transporting bricks from S.S.B. Brick Kiln. It is argued by counsel that Sunil Kumar, registered owner of the vehicle appeared in the witness box to establish that bricks were being carried in the trolly attached with tractor for the purpose of constructing a kothra on his tubewell, therefore, the vehicle was being used for agricultural purpose and not for commercial one. Another submission made by counsel is that the deceased was a student of B.B.A. final year in Suraj College of Engineering & Technology, Mohindergarh, therefore, income assessed by the Tribunal at Rs.8,000/- per month is on higher side and needs reduction.

Counsel representing the claimants has sought enhancement of compensation primarily on two counts. The first submission made by counsel is that as the deceased was a student of B.B.A. final year, his income is liable to be enhanced. For this purpose, he has referred to judgment of Division Bench of Andhra Pradesh High Court **B. Ramulamma Vs. M/s Venkatesh Bus Union, Lingarajapuram,**

Bangalore, 2011(7) RCR (Civil) 1672. According to counsel, in the referred authority deceased were students of Computer Engineering of final year and their income was fixed at Rs.12,000/- per month in a case that pertains to the year 1995. In addition, it is argued that claimants are entitled to benefit of future prospects at the rate of 40%.

Counsel representing the insurance company has supported findings of the Tribunal upholding plea of the insurer that the tractor attached with trolly was being used for commercial purpose for carrying bricks from SSB Brick Kiln, owned by Sunil Kumar son of Tej Ram, registered owner of tractor in question.

With regard to quantum of compensation, he has echoed the arguments raised by the appellants with regard to reduction in income of the deceased. In addition, it is argued that though the application for compensation was filed by the widow, minor child and parents of the deceased aged 50 and 52 years, there is nothing on record suggestive of the fact that father of the deceased was dependent upon his income, therefore, admissible deduction for personal expenses should be 1/3rd viz-a-viz 1/4th allowed by the Tribunal.

I have heard counsel for the parties, perused the paper-books and the records.

So far as plea of the appellants that the vehicle was not being used for commercial purpose or the same was carrying bricks meant for constructing a kothra (kotha) on tubewell, Sunil Kumar, owner of the tractor appeared in the witness box and tendered into evidence his affidavit Ex.RW1/A by way of examination in chief.

A relevant extract from paras 3 and 4 of the affidavit reads as follows:-

> "3. That on 26.01.2012 I was constructed a kotra on my tube well for which I need some bricks and purchased the same from SSB Bricks Kiln, the same were being brought to my tube well in the above said tractor.
>
> 4. That I have no concern with SSB Bricks Kiln. My vehicle is not being used by me for any other purpose except agricultural purpose."

Sunil Kumar has categorically deposed that he had no concern with SSB Brick Kiln but his statement recorded by the police during investigation speaks otherwise. Counsel for the appellants has been fair enough to inform that Sunil Kumar – appellant is the owner of SSB Brick Kiln. This fact alone is sufficient to show that Sunil Kumar is guilty of mis-stating a vital fact by way of his sworn affidavit. Testimony of Sunil Kumar in para 3 of the affidavit reproduced hereinbefore does not make reference to the land wherein he wanted to construct a kothra on a tubewell. He has not produced on record any document with regard to his ownership of the land much less to establish that for taking the bricks from SSB Brick Kiln to his land, the vehicle was required to cross Rewari Town where the accident in question took place. In this view of the matter, contention of the appellants that the vehicle in question was being used for agricultural purpose for carrying bricks to construct a kothra on the tubewell is patently false and has rightly been rejected by the Tribunal. That being so, findings recorded by the Tribunal that the vehicle was being used for commercial purpose cannot be faulted with and liable to be affirmed. Consequently, insurance company has rightly been given right of recovery against the insured after indemnifying the claimants. I would hasten to add that the Tribunal has given recovery right against both the insured and driver of the offending vehicle. Indisputably, there is no privity of contract between driver and the insurer, therefore, driver of the vehicle cannot be fastened with liability to pay to the insurance company by way of recovery right in its favour. Thus, findings of the Tribunal giving recovery right against driver of the vehicle are liable to be set aside and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has assessed compensation of Rs.14,21,000/- detailed hereunder :-

Monthly income of the deceased	Rs.8,000/-
Deduction for personal expenses	1/4th
Multiplier	18
Loss of dependency	Rs.12,96,000/-
Funeral expenses	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-

Indisputably, the deceased was a student of final year of B.B.A. in Suraj College of Engineering & Technology, Mohindergarh. There is no material on record to indicate that the said institute is a prestigious institution in the field of education of B.B.A. At the relevant time, minimum wage of an unskilled worker was Rs.4847/- per month. Taking into consideration the educational qualification of the deceased who was doing B.B.A. after passing 10+2, interest of justice would be served if income of the deceased is assessed at Rs.9,000/- per month. In this regard, reference can be made to judgment of this Court **United India Insurance Co. Ltd. Vs. Sukhwinder Singh and others along with connected cases, FAO No.3185 of 2015, decided on 26.09.2017**.

The claimants shall be entitled to increase in income for future prospects at the rate of 40%. For this, reference can be made to judgment of this Court **National Insurance Co. Ltd. Vs. Pushpa Singh Chauhan and others, FAO No.1502 of 2015, decided on 20.03.2015** that stands affirmed by Hon'ble the Supreme Court in Special Leave Petition (C) S No.19533 of 2015. The Tribunal has allowed deduction for personal expenses to the extent of $1/4^{th}$. There is no dispute about entitlement of the widow, minor child and mother of the deceased to get compensation. Father of the deceased is also one of the claimants. He is stated to be 52 years old. Counsel for the claimants has failed to point out any materials on record that father of the deceased was not gainfully employed much less he was dependent upon income of the deceased, a student at the relevant time. That being so, deduction for personal expenses is to be allowed by taking into consideration claim of widow, minor child and mother of the deceased. Accordingly, deduction for personal expenses to the extent of $1/3^{rd}$ is to be applied. Multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.18,14,400/- [Rs.19,44,000/- (Rs.9000 x 12 x 18) + Rs.7,77,600/- (40% future prospects) – Rs.9,07,200/- ($1/3^{rd}$ deduction towards personal expenses).

Under conventional heads, the Tribunal has awarded an amount of Rs.1,25,000/- detailed hereinbefore. The claimants shall be entitled to Rs.70,000/- under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270** :-

Loss of consortium to the widow	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.18,84,400/- and the additional amount is Rs.4,63,400/- (Rs.18,84,400/- - Rs.14,21,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization. The additional amount shall be shared by the widow and minor child of the deceased in the ratio 40:60. The amount falling to share of the minor shall be deposited in a Fixed Deposit, payable on his attaining majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be paid to mother of the minor for meeting expenses on his living and education. All other terms and conditions of the award shall remain intact.

The appeals are disposed of in the aforesaid terms.

FEBRUARY 16, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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