IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

<u>Date of decision: 19.02.2018</u>

FAO No.6147 of 2014 (O&M)

L&T General Insurance Co. Ltd. ... Appellant

Versus

Vidya Devi and another ... Respondents

FAO No.4679 of 2016 (O&M)

Vidya Devi ... Appellant

Versus

Juj Singh and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Goyal, Advocate
for the insurance company.

Mr. S.S. Sarwara, Advocate
for the appellant in FAO No.4679 of 2016 and
for respondent No.1 in FAO No.6147 of 2014.

Mr. H.S. Tuli, Advocate for
Mr. S.S. Rangi, Advocate
for respondent No.1 in FAO No.4679 of 2016 and
for respondent No.2 in FAO No.6147 of 2014.

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

This order will dispose of FAO Nos.6147 of 2014 and 4679 of

2016 as these have emerged out of the same award dated 11.03.2013 passed by the Motor Accidents Claims Tribunal, Patiala whereby compensation has been awarded on account of death of Mohinder Singh in a motor vehicular accident that took place on 28.09.2011

FAO No.6147 of 2014 has been filed by L&T General Insurance Company Ltd. whereas FAO No.4679 of 2016 has been filed by the claimant seeking enhancement of compensation.

Counsel for the appellant-insurance company has submitted that as driver of the tractor was possessing a driving licence without endorsement of transport and as the vehicle in question is a commercial vehicle registered and insured as such, Juj Singh, driver was not competent to drive the vehicle in question, therefore, the insurance company is entitle to be exonerated of liability or in the alternative given right of recovery against the insured. It has further been argued that the matter with regard to driving licence is pending consideration before Hon'ble the Supreme Court in **Bajaj Allianz General Insurance Co. Ltd. Vs. Rambha Devi, SLP No.27787 of 2017.**

Counsel for the claimant has pressed for enhancement of compensation by making two fold submissions. It is argued that the Tribunal has not allowed benefit of increase in income for future prospects @ 25%. Deduction for personal expenses allowed by the Tribunal is liable to be modified by making it $1/3^{rd}$ in place of 50%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, in reply, has supported assessment made by the Tribunal with the plea that adequate compensation has been paid. However, it is argued that deceased was more than 50 years of age, therefore, addition for future prospects should be 10% and multiplier should be allowed accordingly.

The plea of the insurance company with regard to incompetency of Juj Singh to drive the tractor in question is not tenable in the light of latest judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731**. Indisputably, gross vehicle weight of the tractor is less than 7500 kgs., therefore, it falls within the definition of light motor vehicle under Section 2(21) of the Motor Vehicles Act, 1988 (in short 'the Act'). That being so, contention raised by the insurance company in regard to driving licence of the driver is no longer *res integra* and liable to be answered against the insurance company and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has awarded Rs.3,61,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	13
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.3,51,000/-
5. Expenses on funeral	Rs.5000/-
6. Loss of consortium	Rs.5000/-

The Tribunal has held that the deceased was 50 years old and accordingly multiplier of 13 was applied for calculating loss of dependency. Counsel for the insurance company has failed to point out any materials on record to interfere in findings of the Tribunal with regard to age of the deceased and multiplier adopted on the basis thereof. As such, multiplier adopted by the Tribunal is affirmed. As the deceased was 50 years old, claimant shall be entitled to increase in income for future prospects @ 25%.

The instant claim petition was preferred by widow of the deceased Smt. Vidya Devi. Hon'ble the Supreme Court in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** with an intent to bring uniformity in the compensation computing process, laid down criteria with regard to deduction for personal expenses and multiplier etc. The Apex Court has held that in case the deceased happens to be an unmarried person and claimants are his parents, admissible deduction for personal expenses would be 50%. In case the claimants are 2 to 3, deduction would be $1/3^{rd}$. However, the question that if the claimant happens to be widow of the deceased, what should be the deduction for personal expenses has not been addressed. In absence of any guideline from the judgment **Sarla Verma's case** (supra), as widow is entitled to loss of dependency as well as loss of estate, it is expedient in the interest of justice that deduction for personal expenses to the extent of $1/3^{rd}$ is allowed. In this context, reference can be made to Division Bench judgment of 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**. Accordingly, deduction allowed by the Tribunal is modified with the observation that it would be 1/3rd in place of 50%. In view of the above, loss of dependency comes to Rs.5,85,000/- (Rs.4500 x 12 x 13) + (25% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, claimant 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.6,55,000/- and the additional amount is Rs.2,94,000/- (6,55,000 – 3,61,000), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 1065 days in filing the appeal. The additional amount shall be invested in FDR for a period of three years.

The appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to note that counsel for the claimant would inform that till date, the insurance company has not paid any amount as execution filed by the claimant has been adjourned *sine die* by the Tribunal at Patiala.

Counsel representing the insurance company is directed to ensure that the company releases payment to the claimant within 45 days.

He has assured that the payment as per the award passed by the Tribunal as well as additional amount would be paid to the widow within 45 days unless the company files an appeal and obtains a stay order from Hon'ble the Supreme Court. Statutory amount deposited by the insurance company shall be released in favour of the claimant by the Registry.

19.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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