IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.11.2018

1. **FAO No.6719 of 2015(O&M)**

Deepak Sharma and another .....Appellants

VERSUS

Reliance General Insurance Co. Ltd. and others .....Respondents

Present: Mr. Anupam Singla, Advocate for the appellants.

Mr. R.K. Bashamboo, Advocate for respondent No.1.

Mr. Ishan Cooner, Advocate for respondents No.2 to 4.

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2. **FAO No.6762 of 2015(O&M)**

Shobha Rani and others .....Appellants

VERSUS

Deepak Sharma and others .....Respondents

Present: Mr. Ishan Cooner, Advocate for the appellants.

Mr. Anupam Singla, Advocate for respondents No.1 and 2.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

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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.6719 and 6762 of 2015 as these have emerged out of the same award dated 01.07.2015 passed by the Motor Accidents Claims Tribunal, Ambala (in short 'the Tribunal')

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whereby compensation has been assessed on account of death of Kashish in a motor vehicular accident that took place on 01.11.2014.

FAO No.6719 of 2015 has been filed by the driver and owner of alleged offending vehicle whereas other appeal has been filed by the claimants seeking enhancement of compensation. For facility of reference, the parties shall be referred to as the appellants, claimants and insurance company.

Counsel for the appellants has assailed findings of the Tribunal on issue No.1 by relying upon documents (Annexure A-1 and A-2) sought to be produced on record by way of additional evidence. It is argued that to discharge onus of issue No.1 Sunil Kumar PW-4 was examined as a witness of the prosecution in criminal case pertaining to FIR No.387 dated 01.11.2014 registered with police station Ambala Cantt but he has failed to connect the offending vehicle and Deepak Sharma, driver thereof with the occurrence in question and eventually he was declared hostile on the request of Public Prosecutor. As Sunil Kumar failed to support cause of the prosecution, the criminal trial resulted in judgment of acquittal dated 09.09.2015 (Annexure A-2). It is vehemently argued that in view of serious contradiction in the stand of Sunil Kumar before the Tribunal vis-à-vis the criminal Court, testimony of Sunil Kumar is not worthy of credence and reliance and cannot form the basis to answer issue No.1 in favour of the claimants and against the appellants/respondents before the Tribunal.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 with the plea that proceedings before the Tribunal are summary in nature and standard of proof in criminal case and

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proceedings before the Tribunal is entirely different. Further argued that judgment in criminal trial recording acquittal of the driver is neither conclusive nor binding on Motor Accidents Claims Tribunal. For this purpose, reference has been made to judgments of this Court **Krishan s/o Mangiram Vs. Tarawati widow and others, 2012(5) RCR (Civil) 492**, **Oriental Insurance Company Ltd. Vs. Balinder Pal @ Varinder Singh and others, 2017 ACJ 2140** and **Oriental Insurance Company Ltd. Vs. Surjit Kaur and others along with connected case, FAO No.672 of 2014 decided on 08.07.2015**. With regard to compensation assessed by the Tribunal, it is argued that claimants are entitle to addition in income for future prospects and adequate compensation under conventional heads.

Counsel for the insurance company has assailed quantum of compensation with the submission that the Tribunal has assessed income of the deceased at Rs.6000/- per month by treating him as an ordinary labour but minimum wage at the relevant time was Rs.5640/- per month. Another submission made by counsel is that compensation awarded under conventional heads needs modification and the same may be restricted to Rs.70,000/-. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

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

The plea of the claimants is that occurrence in question took place on 01.11.2014 at about 7.15 PM when Kashish Sharma was travelling on his motorcycle bearing No.HR-01-AA-7596 and was hit from behind by truck bearing No.HR-45-A/8936 driven by Deepak Sharma –

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respondent No.1 therein and appellant No.1 in FAO No.6719 of 2015. It is averred that the truck was driven rashly, negligently and at a high speed and hit against motorcycle of Kashish Sharma by going on extreme left side of the road. The occurrence led to lodging of aforesaid FIR on the statement of Sunil Kumar @ Sunny. Sunil Kumar appeared in the witness box and supported cause of the claimants as to the manner in which the occurrence in question took place due to rash and negligent driving of offending vehicle. The Tribunal, by relying upon testimony of Sunil Kumar PW-4 and Veena Sharma, Additional Ahlmad in the Court of Chief Judicial Magistrate, Ambala upheld plea of the claimants that accident is the result of rash and negligent driving of offending vehicle by its driver.

The question for consideration is, what is the effect of failure of Sunil Kumar PW-4 to support cause of the prosecution in the criminal proceedings on the basis whereof Deepak Sharma was acquitted of the offence charged against him. The statement before the criminal Court was recorded subsequent to Sunil Kumar having appeared before the Tribunal, therefore, Sunil Kumar could not be confronted with his statement made before the criminal Court. No such application has been filed by the appellants for recall of Sunil Kumar in the witness box for the purpose of confronting him with his statement recorded in the criminal proceedings. Sunil Kumar is not one of the beneficiaries if the application for compensation is allowed. If Sunil Kumar, for reasons best known to him, did not support cause of the prosecution or to say that he had turned hostile, claimants cannot be condemned for the same. There is no mechanism with the claimants nor they are obligated in law to ensure that the eye witness who has supported their cause in the proceedings for

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compensation must stick to his statement even before the criminal Court in prosecution against driver of the offending vehicle. The matter would have been different had Sunil Kumar been one of the claimants and had taken contradictory stand with regard to occurrence before the different Foras. In this view of the matter, I find myself unable to be persuaded with the submissions made by counsel for the appellants that either on the basis of testimony of Sunil Kumar recorded in the criminal case or in view of judgment passed by the criminal Court recording acquittal of driver of offending vehicle, findings recorded by the Tribunal on issue No.1 can be faulted with. As such, findings of the Tribunal on issue No.1 are affirmed.

This brings the Court to compensation assessed by the Tribunal. The Tribunal has awarded compensation of Rs.8,73,000/- detailed hereunder:-

Monthly income of the deceased	Rs.6,000/-
Deduction for personal expenses	50%
Multiplier	18
Loss of dependency	Rs.6,48,000/-
Loss of love and affection for the mother	Rs.1,00,000/-
Loss of love and affection for claimants No.2 and 3	Rs.50,000/- each
Expenses on last rites	Rs.25,000/-

The plea of the claimants is that Kashish was running a tea stall after the death of his father late Sh. Rajinder Singh. The Tribunal in para 15 of the award has noticed that no evidence has been adduced by the claimants that Rajinder Sharma was running any tea stall or thereafter Kashish Sharma was running a tea shop. The Tribunal has assessed his

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income at Rs.6,000/- per month by treating him as a casual labour. Taking into consideration the minimum wage available at the relevant time, income of the deceased is assessed at Rs.5,640/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.8,52,768/- [Rs.12,18,240/- (Rs.5640/- x 12 x 18) + Rs.4,87,296/- (40% towards future prospects) – Rs.8,52,768/- (50% deduction towards personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimant No.1 alone shall be entitle to Rs.70,000/- detailed hereunder:-

Loss of consortium to the mother	Rs.40,000/-
Expenses on last rites	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation is Rs.9,22,768/- and additional amount is Rs.49,768/- (Rs.9,22,768/- - Rs.8,73,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to mother of the deceased.

Counsel for the appellants has challenged findings of the Tribunal whereby the insurance company has been exonerated of liability to pay compensation but at the same time directed to pay compensation to the claimants at the first instance and thereafter to recover the same from respondents No.1 and 2 therein. It is argued that licence Ex.RA issued by the State of Nagaland is a part of records. The insurance company did not examine a witness to prove that licence Ex.RA is not valid or it is fake.

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The Tribunal has held that respondent No.1 is resident of Baldev Nagar, Ambala City and he had never resided in Nagaland and even in the licence Ex.RA, his address of Baldev Nagar has been mentioned.

The insurance company neither examined Deepak Sharma to seek his explanation as to the circumstances under which he was issued licence by an authority at Nagaland nor examined a witness of the concerned Licensing Authority to prove if the licence was issued by the said authority or otherwise and if so issued, how the licence was issued in favour of Deepak Sharma who has given his address of Baldev Nagar, Ambala City. As the insurance company failed to discharge its obligation that licence Ex.RA is invalid or fake, neither the insurance company can be heard to say that the insured is guilty of violating the terms and conditions of policy nor can escape its liability to pay compensation by way of indemnification of the insured in compliance with the insurance policy, admittedly issued by the insurance company on realization of amount of premium. In this view of the matter, findings of the Tribunal with regard to insurance company being entitle to be exonerated of liability or the insured being guilty of violating the terms and conditions of policy cannot be allowed to sustain and accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

In view of what has been discussed hereinabove, the appeals are partly allowed in the aforesaid terms.

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

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

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