IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 2.5.2018

1. **FAO No.7054 of 2015(O&M)**

Royal Sundaram Alliance Ins. Co. Ltd. ….Appellant

VERSUS

Smt. Anju Devi and others .....Respondents

Present: Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate for the appellant.

Mr. Devender Arya, Advocate for respondent No.1 and 2.

Mr. Ajay K. Gupta, Advocate for respondents No.3 and 4.

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2. **FAO No.2059 of 2016(O&M)**

Smt. Anju Devi and another ….Appellants

VERSUS

Satender and others .....Respondents

Present: Mr. Devender Arya, Advocate for the appellants.

Mr. Ajay K. Gupta, Advocate for respondents No.1 and 2.

Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate for respondent No.3.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.7054 of 2015 and 2059 of 2016 as these have emerged out of the same award dated 20.07.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short 'the

Tribunal') whereby compensation has been awarded on account of death of Deepak in a motor vehicular accident that took place on 17.04.2014.

FAO No.7054 of 2015 has been filed by the insurance company whereas FAO No.2059 of 2016 has been filed by the claimants seeking enhancement of compensation.

FAO No.7054 of 2015

The first submission made by counsel for the insurance company is that as the offending vehicle i.e. Tractor No.HR-34B-7617 was insured for agriculture purpose and the same was being used for commercial purpose to transport bricks of a brick kiln, insured is guilty of violating the terms and conditions of the policy and insurance company is entitled to be exonerated of liability to pay compensation or in the alternative right of recovery against the insured. To bring home his contention that the tractor was used for commercial purpose, he has pointed out to the cross examination of Raj Kumar PW-3, examined to discharge onus of issue No.1 that accident took place because of rash and negligent driving of the offending vehicle. Further argued that even in the FIR, there is reference that bricks were loaded in the trolley attached with the tractor and the said fact also finds mention in the report under Section 173 Cr.P.C. submitted by the police on due investigation of FIR registered at the behest of Ved Parkash. In support of his contention, he has relied upon judgment of this Court **Mam Chand and another Vs. Sunita Devi and others, 2012(5) RCR (Civil) 275.**

Counsel representing respondents No.3 and 4 (driver and owner respectively) has refuted contention of counsel for the insurer that vehicle was being used for a commercial purpose. It is argued with vehemence that insurance company has not raised a specific plea in the written statement that the vehicle in question was being used for hire or reward nor any issue in this regard was framed, therefore, there was no occasion for the insured and driver of the offending vehicle to adduce evidence to counter this plea of the insurance company. Further submitted that the mere fact that bricks were carried in the trolley attached with the tractor is not at all sufficient to record a positive finding that the tractor was used for commercial purpose or for hire or reward. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Fahim Ahmad and others Vs. United India Insurance Co. Ltd. and others, 2014 (2) RCR (Civil) 470**. Further reference has been made to judgments of this Court **United India Insurance Co. Ltd. Vs. Salemwati and others, FAO No.2611 of 2002, alongwith connected case, decided on 25.08.2017** and **National Insurance Co. Ltd. Vs. Kamlesh Rani and others along with connected case, 2016(4) PLR 505**.

I have heard counsel for the parties, perused the paper-book particularly the award.

So far as the plea of the insurance company that the vehicle was being used for commercial purpose of transporting bricks of brick kiln, as has been rightly argued by counsel for respondents No.3 and 4 that no such plea was raised by the insurer in the written statement and for the reason the Tribunal did not frame an issue in this regard. In absence of any plea of the insurance company that the insured is guilty of using the vehicle for a commercial purpose constituting violation of the terms and conditions of the policy or an issue in this regard having been framed by the Tribunal, respondents No.3 and 4 would be taken by surprise and denied an opportunity to defend their cause on this aspect of the matter if contention of the insurance company is allowed to prevail on the basis of certain facts elicited in cross examination of Raj Kumar PW-3 and FIR registered at the behest of Ved Parkash. Counsel for respondents No.3 and 4 has got no objection if a specific issue in this regard is framed by the Tribunal, parties are permitted to adduce evidence and thereafter, the matter is decided by the Tribunal. Rather, he has prayed that the matter may be remitted to the Tribunal for deciding this issue raised by the insurance company. I find merit in contention of respondents No.3 and 4 that in absence of any such plea by the insurer or an issue being framed in this regard, a serious prejudice shall be caused to respondents No.3 and 4 in case the matter is decided on the basis of materials relied upon by counsel for the insurance company. Keeping in view the interest of substantial justice, it would be in the fitness of things that an additional issue be framed by the Court and the matter is remitted to the Tribunal for decision of that issue in accordance with law. Accordingly, issue No.3A is framed to the following effect:-

> "3A. Whether the vehicle was used for a commercial purpose or for hire or reward and the insured is guilty of violating the terms and conditions of policy, if so its effect? OPR"

In view of the above, the appeal stands disposed of. The matter is remitted to the Tribunal for decision of the said issue on the basis of evidence already on record and additional evidence to be adduced by the parties.

The parties are directed to appear before the Tribunal on 28.05.2018.

FAO No.2059 of 2016

The Tribunal has assessed compensation of Rs.13,21,000/- detailed hereunder:-

Monthly income of the deceased	Rs.8,000/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	Rs.12,96,000/-
Funeral expenses	Rs.25,000/-

Counsel for the claimants has supported assessment of income of the deceased by contending that unfortunate parents of the deceased lost their young son who was 17 years old.

Counsel for the insurance company has two fold submissions to make. It is argued that the deceased was 17 years old student but the Tribunal had assessed his income at Rs.8,000/- per month as against minimum wage of approximately Rs.5550/- per month. Addition in income for future prospects has been allowed at the rate of 50% but the same should be 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

Perusal of the award would reveal that claimants failed to adduce any clear, satisfactory much less cogent evidence to prove income of the deceased. The deceased was 17 years old at the time of death. Taking a clue from notification issued by the State of Haryana fixing minimum wages and available at the relevant time, income of the deceased is assessed at Rs.5550/- per month. In the light of latest judgment in **Pranay Sethi's case** (supra), admissible increase for future prospects is 40%. Multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to

Rs.8,39,160/- [Rs.11,98,800/- (Rs.5550 x 12 x 18) + Rs.4,79,520/- (40% future prospects) – Rs.8,39,160/- (50% deduction towards personal expenses)].

The claimants shall be entitled to following compensation under conventional heads :-

Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.8,69,160/- and the compensation awarded by the Tribunal is reduced to the extent of Rs.4,51,840/- (Rs.13,21,000/- - Rs.8,69,160/-).

The additional amount (if already paid) can be recovered by the insurance company by filing an appropriate application before the Tribunal subject, however, to outcome of the decision on issue No.3A by the Tribunal.

The appeal stands disposed of accordingly.

MAY 2, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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