IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 9875 of 2014(O&M)

Date of decision: 10.12.2018

Kistoori and others …..Appellants

VERSUS

Vikash and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jitender Nara, Advocate for the appellants.

Mr. Ram Avtar, Advocate for respondent no.3.

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REKHA MITTAL, J. (Oral)

As respondent No.2 Nikhil was ex parte before the Tribunal, service of respondent No.2 is dispensed with.

The claimants are in appeal seeking enhancement of compensation assessed by the Motor Accidents Claims Tribunal, Rewari (in short 'the Tribunal') on account of death of Parkash in a motor vehicular accident that took place on 30.01.2012.

The Tribunal has awarded compensation of Rs.6,39,800/-, detailed hereunder:-

Monthly income of the deceased	Rs.5200/-
Deduction for personal expenses	1/4th
Multiplier	11
Loss of dependency	Rs.5,14,800/-
Loss of consortium	Rs.1,00,000/-
Funeral expenses	Rs.25000/-

The Tribunal has allowed a sum of Rs.1,25,000/- under conventional heads. When the case is examined in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270** and latest judgment by three-Judge Bench **Sebastiani Lakra and others Vs. National Insurance Co. Ltd. and another, Civil Appeal No(s).10588-89 of 2018 arising out of SLP (C) No(s).12359-12360 of 2018, decided on 12.10.2018**, claimants are entitle to Rs.70,000/- under conventional heads. Even if the claimants are allowed addition in income for future prospects at the rate of 10% but conventional heads are restricted to Rs.70,000/-, there would be no gain qua compensation payable to the claimants. In the circumstances, compensation assessed by the Tribunal is kept intact. However, compensation shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

Perusal of findings of the Tribunal qua driving licence would reveal that the insurance company has been exonerated of liability to pay compensation on the premise that driver was not holding valid licence at the time of accident.

Counsel for the insurance company would inform that the insurance company has been exonerated of liability to pay compensation in view of findings on the question of driving licence and those findings have neither been challenged by the driver and owner of the vehicle nor by the claimants.

Counsel for the insurance company would argue that as the driver neither appeared in the witness box nor produced the driving licence, it can safely be inferred that he was not possessing licence to drive the motorcycle. He would further inform the Court that registered owner of the motorcycle was proceeded against ex parte and he also did not bother to produce driving licence, if any, possessed by the driver. He has supported findings of the Tribunal exonerating the insurance company of liability to pay compensation.

When the facts and circumstances of the present case are examined in the light of latest judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018 (1) PLR 425** the insurance company cannot be completely exonerated of liability to pay compensation. In the given circumstances, insurance company would be liable to pay compensation to the claimants but would have right of recovery against the insured after discharging liability towards the claimants.

For the foregoing reasons, the appeal is disposed of with modification in the aforesaid terms.

DECEMBER 10, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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