

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

**FAO No.3346 of 2017 (O&M)
Date of Decision.15.05.2018**

The New India Assurance Company Ltd. ...Appellant

Vs

Sunita Makol and others ...Respondents

2. FAO No.6275 of 2017 (O&M)

Sunita Makol and another ...Appellants

Vs

Jatinder Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vinod Gupta, Advocate
for the appellant in FAO No.3346 of 2017 and
for respondent No.3 in FAO No.6275 of 2017.

Mr. Balwinder Singh, Advocate for
Mr. Suveer Sheokand, Advocate
for the appellants in FAO No.6275 of 2017 and
for respondent No.1 to 2 in FAO No.3346 of 2017.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals bearing No.3446 of 2017 and 6275 of 2017. The former is at the instance of the insurance company challenging the award passed by the Tribunal on the ground of quantum and liability whereas the latter at the instance of the claimants seeking enhancement.

Both appeals arise out of accident occurred on 12.06.2015 wherein a tanker bearing No.GJ-12AT-5251 loaded with ammonia gas got struck against the upper portion of the bridge resulting into leakage of the gas. The deceased-Satpal Makol came

into the contact of ammonia gas, which proved fatal to him. He was stated to be running a sweet shop in the name and style of M/s Lovely Sweets, Doraha and earning ₹80,000/- per month. The Tribunal while assessing the compensation of ₹24,65,000/-, took the income of the deceased as ₹40,000/-, made a deduction of $\frac{1}{3}$ rd and applied a multiplier of 7 including ₹1 lac each for loss of consortium and loss of love and affection and ₹25,000/- towards funeral expenses. The liability was fastened upon the insurance company to satisfy the claim.

Mr. Vinod Gupta, learned counsel appearing on behalf of the appellant-insurance company in FAO No.3346 of 2017 submitted that the Tribunal erred while making a deduction of $\frac{1}{3}$ rd whereas it should have been $\frac{1}{2}$ as the son, being major, was not dependent upon the deceased. Moreover, the conventional heads to the tune of ₹2,25,000/- are on higher side as per the latest law. On the issue of liability, he referred to Rule 9 of the Central Motor Vehicles Rules and Section 14 of the Motor Vehicles Act to contend that the driver of the offending vehicle was not competent to drive the same, therefore, the liability ought not have been fastened upon the insurance company, thus, urges this Court for modification of the award.

Mr. Balwinder Singh for Mr. Suveer Sheokand, learned counsel appearing on behalf of the appellants-claimants submitted that the Tribunal has erred in not providing loss of estate and future prospects on the salary of the deceased, therefore, the amount of compensation is required to be enhanced.

I have heard learned counsel for the parties and appraised the paper book. As regards the issue of quantum, I am of the view that the Tribunal has rightly applied deduction of 1/3rd towards personal expenses. However, as regards the assessment of conventional heads, I am of the view that though the assessment is on higher side as per the latest law but the same would be set off as the claimants were entitled to increase on the salary of the deceased towards future prospects, much less, loss of estate. Therefore, the assessment made by the Tribunal does not call for any interference.

As regards the issue of liability, as per Rule 9 of Central Motor Vehicle Rules, a person driving a goods carriage carrying dangerous or hazardous goods must have knowledge of one Indian Language specified in Schedule VIII of the Constitution and English language and must also go through a training of three days to know about the intricacies of the hazardous goods loaded in the vehicle they used to drive. As per Section 14 of the Motor Vehicles Act, licence to drive a transport vehicle carrying goods of dangerous or hazardous nature shall be effective for a period of one year and the renewal thereof shall be subject to condition that the driver undergoes one day refresher course of the prescribed syllabus. Concededly, no such evidence brought on record that the driver, who was driving the vehicle at the time of accident, had fulfilled the aforementioned qualifications. In the absence of the same, there was breach of terms and conditions of the policy, therefore, the liability has wrongly been fastened upon the insurance company.

In view of the aforementioned, the liability to satisfy the

aforementioned amount of compensation shall be on the insurance company at the first instance, which shall have recovery rights to recover the same from the owner and driver in accordance with law.

As an upshot of my finding, the award of the Tribunal is modified to the above extent only. Resultantly, FAO No.3346 of 2017 is dismissed and FAO No.6275 of 2017 is partly allowed.

(AMIT RAWAL)
JUDGE

May 15, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No