IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.175 of 2018(O&M)

Date of decision: 28.2.2018

Tata AIG General Insurance Co. Ltd. …..Appellant

VERSUS

Shaminder Kaur and others .....Respondents

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Mr. Siddharth Gupta, Advocate for respondent Nos.1 to 3.

*****

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 06.10.2017 passed by the Motor Accidents Claims Tribunal, Faridkot (in short 'the Tribunal') whereby compensation has been awarded on account of death of Amrik Singh in a motor vehicular accident due to rash and negligent driving of car bearing temporary Registration No.PB-29F-Temp-3371 by Shubham Mittal (minor), sued through his father Naveen Kumar Mittal as his natural guardian and next friend.

The Tribunal has granted compensation to the tune of Rs.85,73,256/- detailed hereunder:-

Monthly income of the deceased	Rs.49692/-
Addition in income for future prospects	50%
Deduction for personal expenses	1/3rd
Multiplier	14
Loss of dependency	Rs.83,48,256/-

Loss of consortium	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Loss of love and affection for the children	Rs.1,00,000/-

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal holding insurance company liable to pay compensation to the claimants though has been given right of recovery against the insured. It is argued that as the vehicle in question was being driven by Shubham, a minor, who admittedly did not possess a driving licence, insurance company is entitled to be exonerated of its liability to pay compensation. In support of her contention, she has placed heavy reliance on observations of Hon'ble the Supreme Court in para 80 of the judgment **National Insurance Company Ltd. Vs. Swaran Singh and others, 2004(2) RCR (Civil) 114**.

Another submission made by counsel is that as per salary slip for the month of April 2013, Amrik Singh was being paid mobile allowance of Rs.500/- per month which is liable to be deducted being personal in nature. The Tribunal has not deducted income tax payable on the basis of salary of deceased. Addition in income for future prospects is required to be 30% as against 50% allowed by the Tribunal as the deceased was more than 45 years old at the time of occurrence. Compensation awarded under conventional heads needs to be restricted to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**, in addition, it is argued that penal interest at the rate of 12% per annum allowed by the Tribunal cannot be allowed to sustain in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Keshav Bahadur, 2004 ACJ 648**.

Counsel representing the claimants/caveators has supported findings of the Tribunal holding insurance company liable to pay compensation even if the vehicle was driven by a minor who did not possess licence authorizing him to drive the vehicle in question. He has also relied upon judgment of Hon'ble the Supreme Court in **Swaran Singh and others case** (supra) while referring to summary of findings recorded in para 105 particularly finding contained in sub para (x) of the said para. Further reference has been made to judgment of Hon'ble the Supreme Court **S. Iyyapan Vs. M/s United India Insurance Co. Ltd. and another, 2013(3) RCR (Civil) 654**. Reference has also been made to judgment of this Court **Sandeep Sharma Vs. Baljeet Kaur and others, 2014 (77) RCR (Civil) 890**. With regard to quantum of compensation, he has supported findings of the Tribunal. He has refuted contention of counsel for the appellant with regard to deduction of mobile allowance for computing loss of dependency with the plea that the said allowance was available for family of the deceased.

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

In **Swaran Singh and others case** (supra), Hon'ble the Apex Court in para 80 of the judgment has held quoted hereunder:-

> "80. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy

the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver has a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g. a case where an accident takes place owing to a mechanical fault or vis-major. [See Jitendra Kumar (supra)]"

However, summary of findings to the various issues raised in the petitions is culled out in para 105 and sub para (x) of para 105 reads as follows:-

"(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal."

A conjoint reading of para 80 and summary of findings in para 105 particularly sub para (x) reproduced hereinbefore leaves no manner of doubt that the insurance company cannot escape its liability to satisfy claim of a third party in discharge of its obligation under the contract of insurance entered into by the insured in compliance of mandatory obligation under Section 147 of the Motor Vehicles Act, 1988 (in short 'the Act'). Similarly, in **S. Iyyapan's case** (supra), Hon'ble the Apex Court has held that it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. Further held that under Section 149, the insurer can defend the action inter alia on the grounds namely (i) the vehicle was not driven by a named person. (ii) a person is not duly licensed and (iii) person was disqualified to hold and obtain a driving licence.

In this view of the matter, I find myself unable to accept contention of the insurance company that the insurance company is entitled to be exonerated of its liability to pay compensation to the claimants as driver of the vehicle did not possess a licence.

This brings the Court to quantum of compensation assessed by the Tribunal. Contention raised by counsel for the insurance company to deduct the amount of Rs.500/- per month paid as mobile allowance to the deceased is not meritorious when examined in the light of judgments of Hon'ble the Supreme Court **Manasvi Jain versus Delhi Transport**

Corporation, (2014) 13 SCC 22 and **Shyamwati Sharma and others v. Karam Singh and others, (2010) 12 SCC 378.** Gross salary of the deceased was Rs.49,692/- and the annual income comes to Rs.5,96,304/-. After deducting liability to pay income tax of Rs. 49,260/-, income available for loss of dependency is Rs.5,47,044/-. As the deceased was more than 45 years old and a regular government employee, admissible increase in income for future prospects would be 30% in place of 50%. The multiplier and deduction for personal expenses allowed by the Tribunal are liable to be affirmed and ordered accordingly. In this manner loss of dependency, comes to Rs.66,37,467/- [Rs.76,58,616/- (5,47,044/- x 14) + Rs.22,97,585/- (30% towards future prospects) – Rs. (1/3rd deduction towards personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000/- in the light of judgment in **Pranay Sethi and others case** (supra) detailed hereunder:-

Loss of consortium to the widow	Rs.40,000/-
Expenses on funeral	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.67,07,467/- and the compensation awarded by the Tribunal is reduced to the extent of Rs.18,65,789/- (Rs.85,73,256/- - Rs.67,07,467/-).

The appeal filed by the Insurance Company is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention here that the appeal has been disposed of without giving notice to the driver and owner of the offending vehicle. Any observation made hereinbefore, shall not cause prejudice to them in case they prefer an appeal challenging findings of the Tribunal giving right of recovery in favour of the insurer or quantum of compensation assessed by the Tribunal.

FEBRUARY 28, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no