IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1 **FAO-2386-1994**

Date of Decision : December 05, 2019

THE NEW INDIA ASSURANCE CO. LTD

.....Appellant

VERSUS

MST. JAMILA AND ORS.

.....Respondents

2 **FAO-2423-1994**

MST. JAMILA AND ORS.

.....Appellants

VERSUS

KAAN SINGH AND ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Deepak Suri, Advocate
for the appellant in FAO-2386-1994 and
for respondent No.2 in FAO-2423-1994.

Mr. P.K.Mutneja, Advocate
for the appellants in FAO-2423-1994 and
for respondents No.1 to 8 in FAO-2386-1994.

NIRMALJIT KAUR, J. (Oral)

Both the above mentioned appeals shall stand decided by this common order.

FAO-2386-1994 is filed by the appellant-Insurance Company against the award dated 4.8.1994 passed by the Motor Accident Claims Tribunal, Narnaul.

While praying for setting aside the said award, learned counsel for the appellant-Insurance Company submitted that the claim-petition is not maintainable as the deceased-Sahabuddin had caused the accident himself as he was the driver of the truck involved in the accident. No compensation could be awarded for his death as he was not a third party. The appellant-Insurance Company has no liability under the Motor Vehicle Act for the death of their own driver and the Tribunal had ignored the insurance policy and the specific plea of the Insurance Company while awarding compensation.

It is not disputed that the said accident occurred when the deceased-Sahabuddin was driving the truck bearing No.RJ-23-G/0166 on 23.1.1993 and at about 4.00/5.00 p.m., a stray cattle appeared in the middle of the road and while trying to avoid the accident, the said vehicle struck in a kikar tree. As a result of which, Sahabuddin received fatal injuries and died on the spot.

Reliance has been placed upon the judgment rendered in the case of **Oriental Insurance Co. Ltd**. **Vs**. **Jhuma Saha and others**, *2007 (1) R.C.R.(Civil)* wherein it is held that in case the deceased is a owner of the vehicle and the said accident does not involve another motor vehicle other than the one who is driving the vehicle in question, the liability of the Insurance Company is only to the extent of indemnification of the insured i.e. third party and the liability of the compensation cannot be fastened to indemnify the said owner, who is the insured.

The law settled by the Hon'ble Apex Court in the judgment relied upon by learned counsel for the appellant-Insurance Company is not disputed. However, the same does not apply to the facts of the present case in as much as a perusal of the Insurance Policy shows that a separate extra premium was being paid on behalf of operation, maintenance, unloading for the persons employed in connection with the operation and or maintaining and or unloading of motor vehicle INT 17. This fact is not disputed. In the present case, the said vehicle was being driven by the deceased, who was a driver of the said vehicle and, therefore, incharge of the operation of the vehicle. Accordingly, the deceased being the driver of the vehicle was covered as per the policy. The Hon'ble Apex Court too in the case of **National insurance Company** **Vs**. **Prem Bai Patel and others, (2005)6 Supreme Court Cases 172** on the similar issue involved held in paras 13 and 15 as under:-

> "13 The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid

and the terms of the policy.

15. Though the aforesaid decision has been rendered on Section 95 (2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act."

In view of the above discussion, this Court finds no merit in the appeal filed by the appellant-Insurance Company and the same is liable to be dismissed.

FAO-2423-1994 is filed by the appellants-claimants praying for enhancement of the amount of compensation by the Motor Accident Claims Tribunal, Narnaul vide the impugned award.

While praying for enhancement, learned counsel for the appellants-claimants submitted that in the present case, the incident occurred on 23.1.1993. The salary of the driver at that point of time was Rs.2,500/- p.m. whereas the same has been assessed as Rs.1,200/- per month which is on the lower side.

Admittedly, the Cleaner appeared as PW3 and stated in no uncertain terms that he was being paid Rs.2,000/- as salary. The said statement was corroborated by Karan Singh, owner of the vehicle, who appeared as PW2 and admitted that he was paying Rs. 2,500/- per month as salary to the deceased in his capacity as Driver of the vehicle. Obviously, the salary of a Driver could not have been less than of a Cleaner. Therefore, this Court has no hesitation in holding that the income assessed is on the lower side and it should have been taken as Rs.2500/- per month.

Enhancement is also prayed for future prospects as nothing has been granted. It is not disputed that as per the judgment rendered in the case of **National Insurance Company Limited** vs. **Pranay Sethi and others,** *2017 AIR(SC) 5157*, the claimants are entitled to the future prospects @ 40% taking into account that the deceased was 33 years of age. Accordingly, the claimants are held entitled to the future prospects @ 40%. Nothing has also been granted under the conventional heads or consortium. As per the judgment rendered in the case of Pranay Sethi's case (supra), the claimants are entitled to Rs.70,000/- towards consortium and conventional head. They are also entitled to multiplier of 17 instead of 16 taking into account that the deceased was 33 years of age. Further, there are as many as seven dependents-claimants being a mother, widow wife and five children. Therefore, the deduction should be 1/5th instead of 1/3rd.

Accordingly, the award is modified as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	Rs.2500/- p.m.
2	Future prospects @ 40%	2500 @ 40% = 1000 2500 + 1000 = 3500
3	Dependency 1/5th	3500 @ 1/5th = 700 3500-700 = 2800
4	Multiplier	2800 x 12 x 17 = Rs.5,71,200/-
5	Conventional Heads	Rs.70,000/-
6	Total	Rs.6,41,200/-
7	Compensation awarded by the Tribunal	Rs.1,72,800/-
8	Differences	Rs.4,68,400/-

Accordingly, the present appeal is allowed to the said extent. The enhanced amount of Rs.4,68,400/- be deposited within two months from the receipt of certified copy of this order alongwith interest @ 6% per annum from the date of the claim petition till its realization.

However, in case the same is not deposited within two months, the same shall thereafter be deposited alongwith interest @ 12% till payment after the expiry of two months.

(NIRMALJIT KAUR)
JUDGE

December 05, 2019
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No