101-A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1166 of 1996 (O&M)
Date of Decision: 03.04.2019

Amarjit Kaur and others

-Appellants

Vs

Pepsu Road Transport Corporation and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Swaich, Advocate, and
Mr. Deepak Negi, Advocate,
for the appellants.

Mr. Aman Sharma, Advocate,
for respondent No.1.

Mr. Vishwajit Bedi, Advocate,
for respondent No.4.

Mr. Neeraj Khanna, Advocate,
for Insurance Company.

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RAJ MOHAN SINGH, J.

1. This appeal has been preferred by the claimants for enhancement of compensation against the award dated 23.11.1994 passed by Motor Accident Claims Tribunal, Bathinda.

2. The accident in question took place on 11.11.1991 in which Naik Sukhdev Singh- husband of appellant No.1 lost his life. Other claimants are children and mother of the deceased.

3. The Tribunal held that the accident in question took

place due to rash and negligent driving by the driver of the offending vehicle. The Tribunal after assessing the material on record awarded an amount of Rs.1,92,000/- as compensation.

4. I have heard the submissions made by learned counsel for the parties.

5. The Tribunal assessed the monthly income of the deceased to be Rs.1500/- per month which in my considered opinion is just and appropriate. The deceased was 39 years of age at the time of accident, therefore, increase on account of future prospects to the tune of 50% in view of **National Insurance Company Limited vs Pranay Sethi, 2017 SCC 1270** is to be added to the monthly income of the deceased. In this way, monthly income of the deceased would come out to be Rs.2250/- per month i.e. Rs.27,000/- per annum.

6. In view of composition of family of the deceased, deduction to the tune of 1/4th can be applied towards personal expenses of the deceased. Therefore, annual dependency would come out to be Rs.20,256/- (2250-562=1688x12=20,256).

7. The deceased was 39 years of age at the time of accident. In view of ratio laid down in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,** multiplier of 15 is to be applied. So, the assessment towards dependency comes out to be Rs.3,03,840/-

(20,256x15). An additional amount of Rs.70,000/- can be assessed towards loss of estate, loss of consortium and funeral expenses in view of **Pranay Sethi's case (supra)**.

8. The total compensation would come out to be Rs.3,73,840/-. The enhanced amount of compensation i.e. Rs.1,80,840/- shall carry interest @ 7.5% per annum from the date of filing of claim petition till final realization of the award.

9. The issue of liability to pay compensation was raked up in RSA No.1138 of 1998 (O&M) titled 'United India Insurance Company Limited vs Pepsu Road Transport Corporation and others' wherein it was decided on 25.02.2019 in the following manner:-

"Now the stage is set for answering the questions of law.

In the considered view of this Court, the suit for declaration was not maintainable against the insurance company. On revocation of the insurance contract, the plaintiff was only entitled to file a suit for damages for wrongful termination of the contract as provided in Section 14 of the Specific Relief Act, 1963. Accordingly, question No.1 is answered in favour of the appellant and against the plaintiff-respondent.

Similarly, it is declared that the insurance contract of indemnity as defined in Section 124 of the Contract Act and as *such, these contracts can be terminated and the insurance company or the owner has option to walk out of the contract by giving sufficient notice enabling the other party to take appropriate steps. The insurance contracts cannot be held to be not terminable before the expiry of the term.*

Accordingly, second question of law is also answered in favour of the defendant-appellant.

Hence, judgment of the First Appellate Court is set aside and that of the trial Court is restored.

The pending miscellaneous application, if any, shall stand disposed of in view of the above said judgment.

Regular Second Appeal is allowed."

10. Perusal of aforesaid judgment would show that United India Insurance Company has been absolved of its liability to answer the claim of the claimants, therefore, Pepsu Road Transport Corporation shall be liable.

11. Normal consequence to follow in lieu of decision of RSA No.1138 of 1998 on 25.02.2019.

03.04.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No