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

**Date of decision: 15.1.2019**

1. **FAO No. 4018 of 2001(O&M)**

V.K. Chandela …..Appellant

VERSUS

Nawab and others .....Respondents

Present: Mr. Shiv Kumar, Advocate for the appellant.

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

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2. **FAO No. 998 of 2001(O&M) & XOBJC-53-CII of 2014**

The Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Inderwati and others .....Respondents

Present: Mr. Ram Avtar , Advocate for the appellant.

Mr. Akash Vashisth, Advocate for
Mr. Sanjay Vashisth, Advocate for cross objectors/respondents No.1 to 6.

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3. **FAO No. 999 of 2001(O&M)**

The Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Shimla Devi and others .....Respondents

Present: Mr. Ram Avtar , Advocate for the appellant.

Mr. Akash Vashisth, Advocate for
Mr. Sanjay Vashisth, Advocate for respondents No.1 to 5.

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4. **FAO No. 1000 of 2001(O&M)**

The Oriental Insurance Co. Ltd. …..Appellant

VERSUS

V.K. Chandela and others .....Respondents

Present: Mr. Ram Avtar , Advocate for the appellant.

Mr. Shiv Kumar, Advocate for respondent No.1.

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5. **FAO No. 1001 of 2001(O&M)**

The Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Aruna and others .....Respondents

Present: Mr. Ram Avtar , Advocate for the appellant.

Mr. Shiv Kumar, Advocate for respondent No.1.

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6. **FAO No. 4102 of 2001(O&M)**

Aruna …..Appellant

VERSUS

Nawab and others .....Respondents

Present: Mr. Shiv Kumar, Advocate for the appellant.

Mr. Ram Avtar, Advocate for respondent No.3

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

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**REKHA MITTAL, J.(Oral)**

This order will dispose of FAO Nos.998 to 1001, 4018, 4102 of 2001 and cross objections No.53-II of 2014 as these have emerged out of same award dated 08.01.2001 passed by the Motor Accidents Claims Tribunal, Faridabad whereby compensation has been assessed on account of death of Vijay Pal, Mehak Singh Sharma and injuries sustained by Ms. Aruna and Mahipal Singh whereas V.K. Chandela filed the claim for damage to Maruti Car No.HNU-3447.

FAO Nos.998 to 1001 have been filed by The Oriental Insurance Co. Ltd. with whom the offending vehicle truck No.UP-81-C-3918 was insured. Cross objections No.53-CII of 2014 in FAO No.998 of 2001 have been preferred by Smt. Inderwati and others in respect of death of Vijay Pal. FAO No.4102 of 2001 has been filed by injured/claimant Aruna and No.4018 of 2001 by V.K. Chandela. For the sake of convenience, the parties shall be referred to as 'insurance company' and 'claimant(s)'.

**FAO Nos.998 to 1001, 4018 of 2001**
**and XOBJC-53-CII of 2014**

Counsel for the insurance company would argue that the cover note in respect of the truck in question was effective from 09.12.1994 to 08.12.1995. The insured issued cheque dated 09.12.1994 for payment of premium of Rs.12,443/-. The same was presented for encashment on 13.01.1995 and got dishonored. The insurance company cancelled the policy and sent intimation to the insured with regard to dishonour of the cheque as well as cancellation of the policy vide letter dated 17.01.1995. It is argued that as the insurance company had cancelled the policy much prior to the occurrence in question that took place on

19.04.1995, the insurance company cannot be saddled with liability to pay compensation. In the alternative, it is prayed that even if the insurance company is held liable to pay compensation to the claimants, recovery rights may be given against the insured as there was no contract of insurance on the date of accident i.e. 19.04.1995.

To assail quantum of compensation allowed in favour of Sh. V.K. Chandela for damage to the aforesaid maruti car, it is argued that the maruti car is of 1988 model and the occurrence in question had happened about 7 years thereafter. It is further argued that the vehicle was inspected by the surveyor of insurance company and he prepared report dated 18.10.2000 Ex.RW4/A and assessed loss to the tune of Rs.28,000/-. It is further argued that the claimant failed to adduce cogent and convincing evidence to support findings of the Tribunal allowing compensation to the tune of Rs.85,774.52p qua damage to the maruti car.

Counsel representing the claimants Inderwati and others, Ms. Aruna and V.K. Chandela have supported findings of the Tribunal holding the insurance company liable to pay compensation even if the cheque issued by the insured for payment of premium got dishonoured or the policy in question was cancelled under intimation to the insured. In support of their contention, they have relied upon judgment of Hon'ble the Supreme Court **New India Assurance Co. Ltd. Vs. Rula and others, 2000(2) RCR (Civil) 391.**

To refute contention of the insurance company for challenging quantum of compensation with regard to damage to maruti car aforesaid, counsel for the claimants would argue that the Tribunal, on a detailed consideration of oral and documentary evidence on record, has arrived at a finding that the claimant spent Rs.60,560/- towards different items and accordingly the claimant was rightly reimbursed to the tune of Rs.85,774.52p.

Counsel representing the cross objectors in FAO No.998 of 2001 has prayed for enhancement of compensation on the premise that the Tribunal has not allowed benefit of increase in income for future prospects, deducted 1/3$^{rd}$ for personal expenses as against 1/4$^{th}$ to be allowed in the circumstances that the application has been filed by widow, three minor children and parents of the deceased and adequate compensation is liable to be paid under conventional heads. He has also contended that income of the deceased is liable to be assessed on the basis of statement of Mr. Rajender Sisodia, employer of Vijay Pal.

Counsel for the insurance company has supported assessment made by the Tribunal. It is further argued that cross objections have been preferred after a period of 14 years since filing of appeal and there is delay of more than 600 days in re-filing the cross objections without any tangible explanation.

The Tribunal in para 32 of the award while dealing with the question 'who is responsible for payment of compensation' has held that payment of premium is no concern of third party and subsequent cancellation of the policy due to dishonor of cheque would not affect right of a third party which had accrued on the date of accident. Reference has been made to judgment in **Rula and others case** (supra). It has further been held that proposal for insuring the offending truck was submitted on 09.12.1994 and the accident had taken place on 19.04.1995. Cheque bearing No.160415 Ex.R/5 was issued on 09.12.1994, therefore, subsequent cancellation of policy due to dishonor of cheque would not affect rights of the claimants.

Perusal of the aforesaid observations leaves no manner of doubt that the Tribunal has not rejected plea of the insurance company that due to dishonor of cheque for payment of premium, the policy was cancelled and due intimation was sent to the insured. When the facts and circumstances of the present case are examined in the light of judgment of Hon'ble the Supreme Court in **Rula and others case** (supra), I find it difficult to differ with findings of the Tribunal that the insurance company cannot escape its liability to pay compensation to the claimants. However, as the accident took place after cancellation of the insurance policy under due intimation to the insured, the insurance company shall be entitle to right of recovery against the insured after discharging its liability towards the claimants. In this view of the matter, findings of the Tribunal with regard to responsibility to pay compensation are modified accordingly.

The Tribunal has awarded a sum of Rs.85,774.52 in respect of damage to Maruti Car model 1988 in an occurrence that took place in April 1994. The claimant examined Jagbir Singh PW-7 to prove bill Ex.PW7/A of the value of Rs.60,560/- towards different items mentioned therein. The Tribunal in para 30 of the award has noticed that Jagbir Singh produced counterfoils of bills from Sr. No.351 dated 15.11.1989 to Sr. No.400. The bill bearing No.362 dated 25.08.1995 is the bill in question. The bill No.356 is dated 16.08.1994 whereas bill No.359 is dated 06.07.1994. Similarly, bill No.360 is dated 17.09.1994 whereas bill No.362 is dated 25.08.1995. Taking a view from the date of bill No.360 to be 17.09.1994 and the bill in question No.362 to be dated 25.08.1995, it creates a doubt with regard to genuineness of the bill produced by Jagbir Singh. Not only this, in the bill Ex.PW7/A, there is mention of purchase of body shell, front and rear window, rear dikki and electric work which admittedly was not done by M/s Manva Motors. The claimant has not produced any bill with regard to purchase of items such as body shell, front and rear window, rear dikki and electrical work. There is no explanation tendered by the claimant as to how a bill has been issued by M/s Manva Motors with regard to the aforesaid purchases and electric work in the bill in question. On a cumulative consideration of the aforesaid two serious contradictions/discrepancies in the case of claimant in respect of bill Ex.PW7/A, it is difficult to affirm findings of the Tribunal that the claimant is entitle to get compensation on the basis of bill Ex.PW7/A.

The insurance company appointed a surveyor to inspect the vehicle and he submitted his report valuing damages to the tune of Rs.28000/-. Taking into consideration the report submitted by the surveyor of the insurance company coupled with report of the surveyor appointed by the claimant along with evidence on record, interest of justice would be served if the claimant is awarded a sum of Rs.35,000/- for damage to the car in question. Accordingly, compensation assessed by the Tribunal is reduced to the extent of Rs.50774.52. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal. However, the amount of Rs.35,000/- shall carry interest at the rate and from the period, in terms of the award passed by the Tribunal.

This brings the Court to the cross objections preferred by Smt. Inderwati and others in respect of death of Vijay Pal.

The Tribunal has awarded a sum of Rs.3,19,100/- detailed hereunder:-

| | |
|---|---|
| Monthly income of the deceased | Rs.2150/- |
| Deduction for personal expenses | 1/3rd |
| Multiplier | 18 |
| Loss of dependency | Rs.3,09,600/- |
| Funeral expenses | Rs.2000/- |
| Loss to estate | Rs.2500/- |
| Loss of consortium to the widow | Rs.5000/- |

Smt. Inderwati PW-6 deposed that her husband was driver of a car with Sh. Rajender Sisodia at salary of Rs.3000/- per month. Rajender Sisodia PW-5 would state that Vijay Pal was paid salary of Rs.2150/- per month besides Rs.50/- as daily allowance. Statement of Inderwati is silent about any daily allowance being paid to the deceased. From statement of Rajender Sisodia, it can be inferred that the deceased was paid in all more than Rs.3600/- per month. Indisputably, there is no evidence to support plea of the claimants with regard to salary of the deceased nor Rajender Sisodia has produced any documentary evidence with regard to payment of daily allowance to the deceased. The minimum wage of a skilled worker at the relevant time was far below Rs.2150/- per month assessed by the Tribunal. In the given scenario, assessment of income at Rs.2150/- per month is affirmed.

Claimants shall be entitle to addition in income for future prospects at the rate of 40%. As the deceased was 27 years old, admissible multiplier is 17. The application for compensation has been filed by the widow, three minor children and parents of the deceased. Even if claim made by father of the deceased is rejected, deduction for personal expenses would be 1/4th. In this manner, loss of dependency is calculated at Rs.4,60,530/- [Rs.4,38,600/- (Rs.2150 x 12 x 17) + Rs.1,75,440/- (40% towards future prospects) - Rs.1,53,510/- (1/4th towards personal expenses)]

Under conventional heads, claimants shall be entitle to Rs.30,000/- detailed hereunder:-

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|---|---|
| Loss of consortium to the widow | Rs.10,000/- |
| Loss to estate | Rs.10,000/- |
| Funeral expenses | Rs.10,000/- |

In view of the above, total compensation is Rs.4,90,530/- and additional amount is Rs.1,71,430/- (Rs.4,90,530/- – Rs.3,19,100/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 620 days in re-filing the cross objections.

The appeals and the cross objections are partly allowed in the aforesaid terms.

**FAO No.4102 of 2001**

The Tribunal has awarded compensation of Rs.20646/- (rounded off to Rs.21,000/-) in respect of injuries sustained by minor Aruna, detailed hereunder:-

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|---|---|
| Medical expenses | Rs.10,646.50 |
| Conveyance charges | Rs.2500/- |
| Expenses on special diet | Rs.2500/- |

It appears that though there is no specific mention in the award but a sum of Rs.5000/- has been awarded for pain and suffering undergone by the victim.

Counsel for the appellant would argue that the injured/victim sustained multiple injuries on her head, face, hands, right shoulder, right leg and backside of ear etc. She remained admitted in the hospital for 11 days. It is argued that compensation allowed by the Tribunal is inadequate and needs enhancement.

Counsel representing the insurance company would state that there is no justification for allowing additional amount.

Aruna (minor) sustained injuries on different parts of her body and remained admitted in Escorts Medical Centre, Faridabad for a period of 11 days. Her parents must have remained busy in attending to the victim causing loss of their income. The Tribunal has not awarded any compensation for services of an attendant. In the given scenario, claimant shall be entitle to additional amount of Rs.3000/- with regard to services of an attendant and loss of income to the parents. The additional amount shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

**JANUARY 15, 2019** **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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