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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2019.05.03 16:29
I attest to the accuracy and
authenticity of this document

FAO-2741-2004

Date of decision : 30.4.2019

Mubina and others

..... Appellants

Versus

Pramod and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashish Gupta, Advocate,
for appellants.

Mr. Sanjeev Pabbi, Advocate,
for insurance company.

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KULDIP SINGH J. (ORAL)

Since insurance company is liable to pay compensation,
service of respondents No. 1 and 2 is dispensed with.

Arguments heard.

The brief facts of case are that deceased Hakam alias Hakmuddin was travelling in a three wheeler No. HR 38 4808 which was hit by truck No. HR 38F 5830, coming from opposite direction. As a result of accident, deceased was crushed under truck and died at spot. The police registered the case and challaned truck driver as well as three wheeler driver. The widow and other legal heirs of deceased filed claim petition which was treated under Section 163A of Motor Vehicle Act, 1988, on account of statement made by counsel. The Tribunal held that both vehicles were involved in accident and are liable. The Tribunal considering age of deceased and second schedule attached to Section 163A of Motor Vehicle Act, 1988, calculated compensation at Rs. 3,02,400/-. It also awarded Rs. 5,000/- on account of consortium to widow. Rs. 2,000/- for funeral expenses and Rs. 2,500/- on account of loss of estate. However,

compensation was reduced to one half i.e. Rs. 1,55,950/- on account of fact that tortfeasors, namely, three wheeler owner was not made party. Claimants have filed appeal for enhancement of compensation.

First and foremost point is as to whether compensation could be reduced to one half on account of another tortfeasor, namely, owner of three wheeler being not made party.

The learned counsel for appellants has relied upon Division bench authority of this Court in Oriental Insurance Company Limited Versus Smt. Parveen Juneja and others, 644, The Punjab Law Reporter, Vol. CXXXI-(2002-2) wherein it was held that in case of composite negligence, claimants can choose to sue any of tortfeasor. It being so, compensation could not be deducted one half on account of fact that another tortfeasor, namely, owner of three wheeler was not made party. Therefore, claimants shall be entitled to full compensation as calculated by Tribunal. However, insurance company of truck shall have always independent right to recover one half from owner driver of three wheeler and insurance company of three wheeler. As such, it is held that claimants are entitled to full compensation of Rs. 3,02,400/- alongwith interest as allowed by Tribunal. Appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

30.4.2019
sjks

Whether speaking order	:	Yes / No
Whether reportable	:	Yes / No