IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3415 of 2019(O&M)

Date of decision: 27.5.2019

United India Insurance Co. Ltd. …..Appellant

VERSUS

Usha and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.C. Kapoor, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

The present appeal directs challenge against award dated 15.03.2019 passed by the Motor Accidents Claims Tribunal, Panipat (in short 'the Tribunal') whereby compensation has been assessed on account of death of C.P. Mohan in a motor vehicular accident that took place on 02.02.2014.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 as well as quantum of compensation paid to the claimants. It is argued that Usha – claimant No.1 (widow of the deceased) and traveller in ill-fated car bearing No.HR-79-0017 (alleged offending vehicle) appeared in the witness box to discharge onus of issue No.1 that accident is the result of rash and negligent driving of aforesaid offending vehicle by Anil. It is further argued that as per FIR Ex.P3 got registered by Shyny, daughter of the deceased and one of the occupants of the aforesaid car, it is mentioned that accident took place as an unknown trolla moving ahead of the vehicle in question applied sudden brakes.

The Tribunal, in para 15 of the award, has held that even if it is presumed that the driver of unknown trolla had suddenly applied brakes due to which the vehicle in question struck against said trolla, still respondent No.1 cannot be assumed to be not rash and negligent. It was his duty to maintain a safe distance from a vehicle moving ahead at the relevant time. Further held that it is not his case that there was sufficient distance between the vehicle in question and the trolla.

Counsel for the appellant has not disputed the factual findings recorded by the Tribunal and position in law that vehicle going behind another vehicle is required to maintain a safe distance as envisaged in Regulation 23 of the Road Regulations, 1989. In the given circumstances, even if the present is taken as **a** case of composite negligence of two vehicles involved in the occurrence, the claimants are at liberty to claim compensation from either of the joint tortfeasors. That being so, I do not find an error much less illegality in findings of the Tribunal on issue No.1, thus, the same are affirmed.

This brings the Court to quantum of compensation assessed by the Tribunal. The plea of the claimants is that the deceased was doing job with a contractor of NFL at salary of Rs.25000/- per month. The Tribunal refused to accept this plea of claimant as they had not produced any document in support of their contention but assessed income of the deceased at Rs.8000/- per month by treating him as an unskilled person. When the case is examined in the light of notification issued by the State of Haryana fixing minimum wage at the relevant time coupled with that the deceased was 63 years old, income of the deceased is assessed at Rs.6000/- per month. Deduction for personal expenses and multiplier allowed by the Tribunal are correct and affirmed. Accordingly, loss of dependency is calculated at Rs. 3,36,000/- [Rs.5,04,000/- (Rs.6000 x 12 x 7) – Rs. 1,68,000/- (1/3rd deduction towards personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is affirmed.

In view of the above, total compensation comes to Rs.4,06,000/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,12,000/- (Rs.5,18,000/- - Rs.4,06,000/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

Before parting with this order, it is pertinent to mention that compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of appeal filed by the insurance company would not cause prejudice to their right.

MAY 27, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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