IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. F.A.O No. 4260 of 2009 (O&M)

Ranjit Kaur and others ...Appellant

Versus

Sukhdev Pal and others ...Respondents

2. F.A.O No. 2486 of 2010

Sukhdev Pal @ Bittu and others ...Appellants

Versus

New India Assurance Co Ltd and others ...Respondents

Date of decision:- 03.10.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Harsh Aggarwal, for the appellants in FAO No. 4260 of 2009

Mr. R.P. Verma, Advocate for Mr. R.C. Gupta, Advocate for the Insurance Co.

Mr. Aashish Gupta, Advocate for the appellants in FAO No. 2486-2010

RITU BAHRI J. (Oral)

1. The above mentioned two appeals, are being disposed of by this common judgment, having arisen out of the impugned award dated 11.04.2009 passed by the learned Motor Accident Claims Tribunal, Hoshiarpur.

Facts not in dispute

2. The facts which are not in dispute are that on 31.12.2006, Raghbir Singh (since deceased) along with his son Jasprit Singh and daughters Mandeep Kaur, Prabhjot Kaur and Ramanjit Kaur was coming

from Jalandhar to Hoshiarpur on his maruti car bearing registration No. PB-08-T-3235. He was followed by Hardip Singh and his son Surjit Singh. When they reached near petrol pump situated in the area of village Piplanwala, a truck bearing registration No. PN-08-A-7705 driven by respondent No. 1 in a rash and negligent manner came from opposite side and struck against the car driven by Raghbir Singh. The occupants of the car received multiple injuries and were taken to Civil Hospital, Hoshiarpur where Raghbir Singh and his minor son were declared brought dead. F.I.R No. 104 dated 31.12.2006 under Sections 279/337/338/427/304-A IPC was registered against respondent No. 1 at P.S.Model Town, Hoshiarpur.

3. While assessing the compensation, the Tribunal took the income of the ***deceased-Raghbir Singh*** at Rs.90000/- per annum and 1/3rd was deducted towards personal expenses and thereafter, applied the multiplier of 10, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77.*** Further the Tribunal awarded Rs.2000/- towards funeral expenses, Rs.2000/- towards loss of estate & Rs.2000/- towards loss of consortium. The total compensation awarded to the claimants was Rs.06,06,000/-. However, respondent-Insurance Company was given recovery rights against the driver and owner as the driving licence of respondent No. 1 was held to be not valid. The driver was further having no route permit. Neither the driver nor the owner have placed on record the copy of the route permit of the offending vehicle.

4.. In FAO No. 2486-2010, at the very outset, learned counsel for the appellant/owners and driver has referred to judgment of this Court in a case of ***National Insurance Co. Ltd v. Raj Rani and others, 2009 ACJ***

1684 wherein truck hit a motor cycle and motorcyclist sustained fatal injuries. The Insurance Company was seeking to avoid its liability on the ground that truck was being plied by the insured without any permit. However, the Insurance company failed to produce any evidence to the effect that owner had not obtained any permit or route permit which was required in the State. The appeal of the Insurance Company was dismissed and the Insurance company was held responsible to pay the compensation. The operative part of the judgment has been reproduced as under:-

> *7. I have heard learned counsel for the appellant and purused the record. However, I find no force in the contention raised by learned counsel for the appellant. There is no dispute with the proposition of law as canvassed by learned counsel for the appellant. However, in case in hand, the appellant has failed to prove that the truck in question was being plied by the insured in violation of the terms and conditions of the policy. The Tribunal has recorded a finding that a specific issue was framed to the effect that whether truck in question was being driven in violation of the terms and conditions of the insurance policy and the onus to prove this issue was upon the appellant and since the appellant has failed to produce any evidence to prove this issue, the finding on this issue was held against the appellant.*

5. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to the enhanced, as the Tribunal has not given the future prospects and the compensation under conventional head is on the lower side.

6. On the other hand, the learned counsel for the respondent-

driver has vehemently opposed the present appeal.

7. Heard learned counsel for the parties

8. The appeal of the owners and driver deserves to be allowed. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company v. Swaran Singh, 2004(2) RCR Civil 114*** wherein the Hon'ble Supreme Court has laid down that breach of condition of a policy committed by the insured, like non-issuance of licence, has to be proved by the Insurance Company if it wishes to avoid liability. In the summary of defences in para 110 of the judgment, their Lordships have observed in sub-paras (iii) and (iv) as under:-

> *(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in* ***sub-section (2)(a)(ii) of section 149,*** *have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*
>
> *(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish `breach' on*

the part of the owner of the vehice; the burden of proof wherefor would be on them.

09. Thus, the appeal filed by the owners/driver is liable to be allowed as the onus was on the Insurance Company to lead evidence that the driver was not having the route permit to ply the vehicle in State of Punjab. Since no evidence was led by the Insurance Company before the Tribunal, the recovery rights have wrongly been given to the Insurance Company by observing that it was the owner who had to place on record the copy of route permit to show that he was having a valid route permit.

10. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any

quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

11. The compensation is being reassessed as per the judgments mentioned above:-

Sr. No.	***Heads***	***Calculations***
(i)	Income	Rs.90000/- per annum
(ii)	25% of (i) above to be added as future prospects=	Rs.90000+Rs.22500=Rs.1,12,500/- per annum
(iii)	1/3rd of (ii) deducted as personal expenses of the deceased=	Rs.1,12,500-Rs.37500=Rs.75000/- per annum

Sr. No.	***Heads***	***Calculations***
(iv)	Compensation after multiplier of 13 is applied	Rs.75000 X 13= Rs.09,75,000/-
(v)	Conventional heads (Loss of estate, funeral expenses, loss of consortium)	Rs.70,000/-
(vi)	Loss of consortium (child)	Rs.80,000/-(Rs.40,000/- to each child)
(vi)	Loss of filail consortium (mother)	Rs.40,000/-
(viii)	Total Compensation awarded	Rs.11,65,000/-
	Enhanced amount of compensation	**11,65,000-06,06,000=Rs.05,59,000/-**

12. In view of the above, the appeals (FAO No. 4260 of 2009 and 2486 of 2010) stands allowed and the award dated 11.04.2009 stands modified to the above extent and the Insurance Company is liable to make the entire payment of compensation.

13. Accordingly, the claimants are entitled to compensation of Rs.05,59,000/- (in FAO No.4260-2009). The compensation shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% from the date of filing of the claim petition, in view of judgment of Hon'ble the Apex Court in ***Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019***.

14. Further it is hereby directed that the amount of Rs.25,000/- deposited by the appellants at the time of filing of appeal FAO No. 2486 -2010 in the Registry of this Court be returned to them.

03.10.2019 **(RITU BAHRI)**
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***