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

Date of decision: 26.8.2019

1. **CM No.7837-CII of 2019 in/and**

FAO No. 3681 of 2011(O&M)

Rajbala and another …..Appellants

VERSUS

Chandan and others .....Respondents

Present: Mr. Pankaj Mehta, Advocate for the applicant-appellants.

None for respondents No.1 and 2.

Mr. Subhash Goyal, Advocate for the insurance company.

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2. **FAO No. 3171 of 2011(O&M)**

ICICI Lombard General Insurance Co. Ltd. …..Appellant

VERSUS

Rajbala and others .....Respondents

Present: Mr. Subhash Goyal, Advocate for the appellant.

Mr. Pankaj Mehta, Advocate for respondents No.1 and 2.

None for respondents No.3 and 4.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J.(Oral)

**CM No.7837-CII of 2019
in FAO No.3681 of 2011**

Prayer in this application is for fixing actual date of hearing in the main case.

Heard.

In view of the averments made in the application, the same is allowed and FAO No.3681 of 2011 is taken on board today itself.

FAO No.3171 of 2011 filed by the ICICI Lombard General Insurance Company Ltd. is also taken on board today as the same has emerged out of the same award.

<u>FAO Nos.3681 and 3171 of 2011</u>

This order will dispose of FAO Nos.3681 and 3171 of 2011 as these have emerged out of same award dated 22.02.2011 passed by the Motor Accidents Claims Tribunal, Hisar (in short 'the Tribunal') whereby compensation has been assessed on account of death of Rinku in a motor vehicular accident that took place on 09.07.2010.

FAO Nos.3171 of 2011 has been filed by ICICI Lombard General Insurance Co. Ltd. (hereinafter referred to as 'insurance company') whereas other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company has informed that appeal has been filed to assail only quantum of compensation.

The Tribunal has awarded Rs.7,02,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6000/-
Deduction for personal expenses	1/3rd
Multiplier	14
Loss of dependency	Rs.6,72,000/-
Funeral expenses	Rs.5000/-
Loss of love and affection	Rs.25000/-

The plea of claimants is that deceased was working as driver of Tata 407 bearing No.RJ-10G-1519 at monthly salary of Rs.8,000/-. They examined Sharif Khan PW-3, owner of the aforesaid vehicle to prove employment and income of the deceased. The Tribunal accepted plea of the claimants that deceased was working as driver on Tata 407 but denied income at the rate of Rs.8000/- per month for want of producing income tax return or account statement.

Counsel for the claimants has fairly conceded that there is no documentary evidence on record with regard to income of the deceased. Taking a clue from notification issued by the State of Haryana fixing minimum wage of a highly skilled person coupled with that the deceased was working as driver of Tata 407 and he may be staying away from his place of working for certain days in a month, it would be in the fitness of things if income of the deceased is assessed at Rs.6500/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. The Tribunal has allowed deduction of 1/3rd for personal expenses of the deceased. The claim has been preferred by the mother and minor sister of the deceased. When the case is examined in the light of observations made by Hon'ble the Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**, it is difficult to sustain deduction to the tune of 1/3rd. Admissible deduction for personal expenses would be 50%. As the deceased was 21 years old, admissible multiplier is 18. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Smt. Sarla Verma and others case (supra); Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447** and

<u>National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270</u>. In this manner, loss of dependency is calculated at Rs.9,82,800/- [Rs.14,04,000/- (Rs.6500 x 12 x 18) + Rs.5,61,600/- (40% towards future prospects) - Rs.9,82,800/- (50% towards personal expenses)]

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/- detailed hereunder:-

Loss to estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-

In view of the above, total compensation is Rs.10,12,800/- and additional amount is Rs.3,10,800/- (Rs.10,12,800/- – Rs.7,02,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization to mother of the deceased, to be invested in fixed deposit for a period of three years.

For the foregoing reasons, appeal preferred by the claimants i.e. FAO No.3681 of 2011 is partly allowed in the aforesaid terms whereas appeal preferred by the insurance company i.e. FAO No.3171 of 2011 stands disposed of, leaving the parties to bear their own costs.

AUGUST 26, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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