IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.8.2019

1. **FAO No. 1028 of 2013(O&M)** &

XOBJC-100-CII of 2013

ICICI Lombard General Ins. Co. …..Appellant

VERSUS

Shanta Devi and others .....Respondents

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2. **FAO No. 1029 of 2013(O&M) & XOBJC-107-CII of 2013**

ICICI Lombard General Ins. Co. …..Appellant

VERSUS

Shanti Devi and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Sidhu, Advocate for the appellant.

Mr. Jagdish Manchanda, Advocate for the claimants/cross objectors.

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REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.1028, 1029 of 2013 and cross objections No.100-CII of 2013 in FAO No.1028 of 2013 and 107-CII of 2013 in FAO No.1029 of 2013 as the same have arisen out of the same award dated 24.01.2013 passed by the Motor Accidents Claims Tribunal, Hisar (in short 'the Tribunal') whereby compensation has been assessed on account of death of Ishwar Singh, Arjan Dev @ Harish Manchanda and injuries sustained by Shanta Devi in a motor vehicular accident that took place on 20.01.2010. The aforesaid appeals have been preferred by ICICI Lombard General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the cross objections have been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeals have been preferred to assail findings of the Tribunal on issue No.1 and liability of the insurance company to pay compensation.

FAO Nos.1028 and 1029 of 2013

Counsel for the insurance company would argue that the Tribunal framed issue No.1, if the accident was caused due to rash and negligent driving of offending vehicle Bus No.HR-39A-1688 by Jai Bhagwan – respondent No.1 or by respondent No.1(a) therein but while deciding issues No.1 to 9 taken up jointly, the Tribunal has not recorded any findings on issue No.1. It is further submitted that the award passed by the Tribunal may be set aside and the matter be remitted to the Tribunal for deciding all the issues separately, in accordance with law.

Another submission made by counsel is that though the Tribunal has noticed in para 17 of the award by relying upon judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Baljeet Kaur and others, 2004 AIR (SCW) 212** that the insurer/respondent No.3 shall have the right to recover compensation paid from the insured/owner of the offending vehicle but in the concluding para of the award particularly para 44 thereof, respondents No.1 (a), 2 and 3 have been held to be jointly and severally liable to pay compensation. It is argued that since driving licence, if any, possessed by driver of the offending vehicle was not produced on record, the owner and driver of offending vehicle failed to discharge their primary obligation of supplying particulars of the driving licence to the insurance company and thereby the insurance company has been denied an opportunity to verify the driving licence and the insurance company has wrongly been fastened with liability to pay compensation.

Counsel for the claimants/cross objectors is not in a position to dispute that the Tribunal has not recorded any findings on issue No.1 while dealing with issues No.1 to 9 for discussion and decision altogether. However, it has been submitted that the insurance company is rightly fastened with liability to pay compensation even if the insured has not produced licence of the driver. He has prayed for allowing additional compensation in terms of the cross objections filed by the claimants.

Be that as it may, it is undisputed position of the case that three claim applications titled **Smt. Guddi and others vs. Jai Bhagwan and others, Smt Shanta Devi vs. Jai Bhagwan and others and Smt. Shanti Devi and others vs. Jai Bhagwan and others** were decided vide impugned award. The insurance company filed three appeals FAO Nos.1027, 1028 & 1029 of 2013 to assail the award in all the aforesaid claim applications. The appeal titled **ICICI Lombard General Insurance Company vs. Guddi and others**, FAO-1027 of 2013 was decided by this Court vide order dated 14.03.2013 and the same was dismissed. As such, findings of the Tribunal on issue Nos.1 & 9 have attained finality in the claim preferred by Smt. Guddi and ors. and the same would constitute res judicata in the present appeals. In this view of the matter, contentions raised by the insurance company to assail the award in respect of findings on issue Nos.1 & 9 are not tenable and accordingly rejected.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeals stand disposed of.

XOBJC-107-CII-2013 in FAO-1029-2013

The claimants pray for grant of additional compensation qua death of Arjun Dev @ Harish Manchanda.

The Tribunal awarded Rs.6,14,000/- detailed hereunder :-

Monthly income of the deceased	Rs.4000/-
Addition in income for future prospects	30%
Multiplier	14
Deduction for personal expenses	33%
Loss of dependency	Rs.5,74,000/-
Expenses on funeral	Rs.20,000/-
Loss of consortium	Rs.20,000/-

The plea of claimants is that deceased was running a shop of spare-parts and a mechanic. Except bald statement of widow of the deceased, there is no evidence to establish that either the deceased was running spare-parts shop or he was a skilled worker. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.4250/- per month. However, addition in income for future prospects would be 25%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed and so also the multiplier applied. In this manner, loss of dependency is calculated at Rs.5,95,000/- [(Rs.4250 x 12 x 14) + (25% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1.	Loss of consortium	Rs.40,000/-
2.	Loss of estate	Rs.15,000/-
3.	Funeral expenses	Rs.15,000/-

Total compensation is Rs.6,65,000/- and the additional amount is Rs.51,000/- (Rs.6,65,000 – Rs.6,14,000), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased, to be invested in fixed deposit for a period of two years.

The cross objections are partly allowed in the aforesaid terms.

<u>XOBJC-100-CII-2013 in FAO-1028-2013</u>

With regard to injuries sustained by Shanta, the Tribunal has awarded Rs.15,38,000/-, detailed hereunder:-

Loss of future income on account of disability	Rs.6,58,000/-
Reimbursement of medical expenses	Rs.7,70,000/-
Services of an attendant and expenses on special diet	Rs.50,000/-
Pain and sufferings	Rs.20,000/-
On account of sustaining grievous Injuries	Rs.40,000/-

Counsel for the cross objector/claimant would urge that the Tribunal has assessed monthly loss of income at Rs.3000/- per month but as per testimony of the injured, she was doing stitching work etc. thereby earning Rs.12,000/- per month. It is further argued that even if the injured is treated as a house maker, monthly loss of income would be much more than what has been assessed by the Tribunal and accordingly, compensation for future loss of income may be enhanced.

Another submission made by counsel is that as the injured has been rendered 100% disable, she would be requiring services of an attendant round the clock and compensation may be awarded accordingly. The last submission made by counsel is that compensation allowed by the Tribunal for pain and sufferings and special diet etc. is grossly inadequate.

Counsel representing the insurance company, on the contrary, would argue that since the amount of Rs.5 lakh towards medical treatment of the injured has been paid by the insurance company from whom the injured had obtained the policy, compensation allowed with regard to medical expenses is liable to be assessed after deducting the amount of Rs.5 lakh. For this purpose, reference has been made to judgment of this Court **Vishal Vs. Bugga Singh and others, FAO No.5176 of 2005 decided on 11.03.2016**.

There is no dispute that on account of sustaining injuries in the accident, claimant has been rendered disable to the extent of 100% qua whole body as she suffered from paraplegia, left brachial plexus injury and bowel and bladder involvement, proved by Dr. T.S. Bagri, Medical Officer, General Hospital, Rohtak PW-6. Shanta Devi, injured, appeared in the witness box and deposed that she was running a stitching centre and earning Rs.12,000/- per month prior to the accident. Her testimony in this regard does not find corroboration from independent source much less documentary evidence. Perusal of her cross examination would reveal that she had stated that she was keeping record of stitching and earning which she had not brought that day. She has further mentioned that she had shown her income in her return and brought the income tax return for the year 2008 but no such income tax return is available on record. In this view of the matter, I find it difficult to accept contention of the claimant that she is entitle to future loss of income in view of her statement made before the Court. As a matter of fact, there is no sufficient evidence on record that injured was involved in any such commercial activity and had a source of earning. At the same time, as has been rightly argued by counsel for the claimant, her services are to be assessed as a house-maker even if her plea of running stitching centre and earning therefrom is not accepted. Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with that a house-maker has multifarious duties to perform, value of services of the deceased is assessed at Rs.6500/- per month. She was 45 years old at the time of occurrence as stated by Dr. T.S. Bagri PW-6. In the circumstances, admissible multiplier is 14. In this manner, loss of future income on account of disability is calculated at Rs.10,92,000/- (Rs.6500 x 12 x 14).

Unfortunately, the injured has been rendered disable to the extent of 100% on account of her medical condition narrated by Dr. T.S. Bagri. She would be requiring services of an attendant throughout. The value of services of an attendant is assessed at Rs.3000/- per month. The claimant is awarded Rs.5,04,000/- (Rs.3000/- x 12 x 14) for services of an attendant.

The Tribunal has awarded Rs.40,000/- in view of nature of injuries sustained by the victim and Rs.20,000/- for pain and sufferings. There is no head for allowing compensation in view of nature of injuries sustained. The amount of Rs.40,000/- allowed by the Tribunal shall also be appropriated towards pain and sufferings. Claimant shall be entitle to Rs.1,50,000/- for loss of amenities of life and special diet.

This brings the Court to reimbursement of medical expenses. The total amount of bills exhibited on record is Rs.7,78,344. Rakesh Kumar, Medical Record Incharge, Indian Spinal Injuries Centre, Vasant Kunj, New Delhi PW-8 has stated in cross examination that injured was insured from M/s ICICI Prudential Life Insurance Health Solutions and bill of Rs.5,55,255/- was sent to the aforesaid insurance agency and Rs.5,00,000/- was paid to the hospital by the aforesaid insurance agency. When the case is examined in the light of judgment of this Court in **Vishal's case** (supra), the claimant is not entitle to reimbursement of medical expenses to the extent of Rs.5,00,000/- paid by M/s ICICI Prudential Life Insurance Health Solutions directly to Indian Spinal Injuries Centre. The total bill of Rs.5,55,255/- is included while calculating amount of Rs.7,78,344/-. Hence, claimant shall be entitle to reimbursement of medical expenses to the tune of Rs.2,78,344/-. At the same time, the claimant is awarded Rs.5,000/- towards reimbursement of premium paid to get herself insured from ICICI Prudential Life Insurance Health Solutions. The claimant is awarded Rs.25,000/- for future medical treatment.

In view of the above, total compensation is Rs.20,54,344/- and additional amount is Rs.5,16,344/- (Rs.20,54,344 – Rs.15,38,000), payable with interest @ 7.5% per annum from the date of petition till realization.

Perusal of the award would reveal that the Tribunal has not made any arrangement for investment of compensation allowed to the injured so that she can be properly looked after till she remains alive. The additional amount assessed by this Court shall be invested in fixed deposit. Interest accruing thereon shall be paid to the claimant.

The cross objections are partly allowed in the aforesaid terms.

AUGUST 19, 2019 **(REKHA MITTAL)**
'D. Gulati'/Ashok **JUDGE**

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