IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 22.7.2019

1. **FAO No. 2088 of 2013(O&M)**

National Insurance Co. Ltd. …..Appellant

VERSUS

Sudesh Kumar Sharma and others .....Respondents

Present: Mr. Rajbir Wasu, Advocate for the appellant.

Mr. Nipun Gupta, Advocate for
Mr. Deepak Aggarwal, Advocate for respondent No.1.

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2. **FAO No. 2089 of 2013(O&M)**

National Insurance Co Ltd. …..Appellant

VERSUS

Sheela Rani and others .....Respondents

Present: Mr. Rajbir Wasu, Advocate for the appellant.

Mr. Nipun Gupta, Advocate for
Mr. Deepak Aggarwal, Advocate for respondent Nos.1 to 5.

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3. **FAO No. 4458 of 2013(O&M)**

Sheela Rani and others …..Appellant

VERSUS

Roshan Lal and others .....Respondents

Present: Mr. Nipun Gupta, Advocate for
Mr. Deepak Aggarwal, Advocate for the appellants.

None for the respondents No.1 and 2.

Mr. Rajbir Wasu, Advocate for insurance company.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J.

This order will dispose of FAO Nos.2088, 2089 and 4458 of 2013 as these have emerged out of the same accident that took place on 03.01.2011 in which Rajan Sharma sustained injuries that proved fatal and car bearing No.PB-03R-0140 was damaged in respect whereof Sudesh Kumar Sharma filed claim for grant of compensation.

FAO Nos.2088 and 2089 of 2013 have been filed by the National Insurance Co. Ltd. (hereinafter referred to as 'insurance company') whereas FAO No.4458 of 2013 has been filed by Sheela Rani and others (hereinafter referred to as 'claimants') seeking enhancement of compensation in respect of death of Rajan Sharma.

Counsel for the insurance company would inform that appeals have been filed to assail findings of the Motor Accidents Claims Tribunal, Bathinda (in short 'the Tribunal') on issue No.3 pertaining to driving licence possessed by Roshan Lal, driver of offending truck No.PB-13N-9184 and for pressing right of recovery against the insured after payment of compensation to the claimants.

FAO Nos.2088 and 2089 of 2013

Counsel for the appellant- insurance company would argue that the claimants examined a Court official along with record of criminal case lodged against Roshan Lal, driver of the offending vehicle and he produced photocopy of licence of Roshan Lal purported to be issued by a Licensing Authority at Hoshiarpur. The appellant sought necessary verification of said licence and examined Dalip Kumar, Junior Assistant from the office of D.T.O. Hoshiarpur to prove that licence possessed by Roshan Lal was not issued by the said Licensing Authority in his name and the same was issued in the name of somebody else. He would further submit that owner of the aforesaid truck produced photocopy of another driving licence in the name of Roshan Lal and the Tribunal has relied upon the said driving licence to negate plea of the insurance company that Roshan Lal was not holding a valid driving licence at the time of occurrence. It is argued with vehemence that since the insurance company has relied upon the document that came from custody of the Court and the same was found to be fake, the Tribunal should have accepted plea of the insurance company that driver was not possessing a valid licence and as such the insured is guilty of violating the terms and conditions of policy.

There is no representation on behalf of respondents No.2 and 3, driver and owner of offending truck. However, counsel for the claimants has supported findings of the Tribunal on issue No.3.

I have heard counsel for the parties, perused the paper-book particularly the impugned award.

The Tribunal framed issues including issue No.3 reads thus:-

> "Whether respondent No.1 was not holding a valid driving licence at the time of accident. If so, to what effect? OPR-3"

Indisputably, the insurance company verified only one driving licence, photocopy whereof was produced by official of the Court from the records of criminal case registered against Roshan Lal, driver of offending vehicle and the same was found to be fake. The insured provided particulars of another driving licence possessed by Roshan Lal but the insurance company, for the reasons best known, did not verify the second driving licence to discharge onus of issue No.3 that driver was not duly licensed on the date of accident. There cannot be any dispute about the settled position in law that possessing of two licences by a driver may invite some penalty/punishment but in case one of the licences is found to be valid and genuine, the insurance company can neither escape its liability to pay compensation nor can assert its right of recovery against the insured. In the given circumstances, I find myself unable to accept contention of the insurance company that either the insured is guilty of violating the terms and conditions of insurance policy or the insurance company can recover the amount of compensation from the insured after payment of compensation to the claimants.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeals fail and are accordingly dismissed.

FAO No.4458 of 2013

Sheela Rani and others are in appeal seeking enhancement of compensation on account of death of Rajan Sharma.

The Tribunal has awarded Rs.3,50,000/- detailed hereunder:-

Monthly income of the deceased	Rs.5200/-
Deduction for personal expenses	50%
Multiplier	11
Loss of dependency	Rs.3,43,200/-

Loss of consortium	Rs.5,000/-
Funeral expenses	Rs.1800/-

The plea of the claimants is that the deceased was doing the business of building materials thereby earning Rs.40,000/- per month. The claimants failed to adduce sufficient much less cogent evidence to prove avocation and income of the deceased. Taking a clue from notification issued by the State of Punjab coupled with that deceased left behind his widow, two minor children and parents, income of the deceased is assessed at Rs.4200/- per month. It is surprising that the Tribunal has gone wrong in every respect while assessing loss of dependency and compensation under conventional heads. Deduction for personal expenses would be 1/4th and admissible multiplier is 16. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. In this manner, loss of dependency comes to Rs.8,46,720/- [Rs.8,06,400/- (Rs.4200 x 12 x 16) + Rs.3,22,560/- (40% addition towards future prospects) – Rs.2,82,240/- (1/4th deduction towards personal expenses)].

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

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation is Rs.9,16,720/- and the additional amount is Rs.5,66,720/- (Rs.9,16,720/- - Rs.3,50,000/-)

payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

JULY 22, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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