IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-65-CII of 2015 (O&M) in/and
FAO No.10295 of 2014 (O&M)
Date of decision: 08.04.2019

New India Assurance Company Ltd. ... Appellant

Versus

Kamla Devi and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Vinod Bhardwaj, Advocate
for respondents No.1 to 5/cross objectors.

Mr. Arvind Bansal, Advocate for respondent No.6.

Mr. Siddharth Sanwaria, DAG, Haryana.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.10295 of 2014 and cross objections No.65-CII of 2015 as these have emerged out of the same award dated 20.08.2014 passed by the Motor Accidents Claims Tribunal, Kaithal whereby compensation has been assessed on account of death of Chander Bhan in a motor vehicular accident that took place on 10.10.2011 under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act').

FAO No.10295 of 2014 has been filed by the insurance company whereas cross objections have been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would argue that Chander

Bhan had boarded bus No.HR-64-0740 and he sustained injuries because of his having fallen out of bus due to application of brakes by the driver as the bus was overloaded. It is argued that in the circumstances, insurance company cannot be fastened with liability to pay compensation.

The second submission made by counsel is that driver of offending vehicle was holding licence to drive heavy transport vehicle but he was actually driving a public service vehicle, the aforesaid bus. He has also challenged quantum of compensation assessed by the Tribunal with the submission that under Section 163-A of the Act, compensation is required to be assessed in consonance with the structured formula laid down in Second Schedule appended thereto.

Counsel representing the claimants/cross objectors, on the contrary, would argue that compensation assessed by the Tribunal is on lower side and needs enhancement.

The first submission made by counsel for the insurance company raising the question of default/neglect is not tenable in the light of latest judgment of Hon'ble the Supreme Court **United India Insurance Co. Ltd. Vs. Sunil Kumar and another, 2018(1) RCR (Civil) 680.** As the offending vehicle is a transport vehicle meant for carrying passengers, licence possessed by the driver of heavy transport vehicle cannot be said to be ineffective for the purpose of driving the vehicle in question. In this view of the matter, contention of the insurance company is patently misconceived and accordingly rejected.

The Tribunal has awarded Rs.3,25,472/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.3200/-
2. Multiplier	9
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.2,30,472/-
5. Expenses on last rites and transportation	Rs.20,000/-
6. Loss of consortium	Rs.75,000/-

The Tribunal has rightly assessed income of the deceased and so also deduction for personal expenses. However, the admissible multiplier would be 8 in terms of the Second Schedule that provides a multiplier of 8 for the age group above 55 years but not exceeding 60 years. Accordingly, loss of dependency is calculated at Rs.204,800/- [(3200 x 12 x 8) – (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.9500/-, detailed hereunder:-

1. Loss of consortium	Rs.5000/-
2. Loss of estate	Rs.2500/-
3. Funeral expenses	Rs.2000/-

Total compensation is Rs.2,14,300/- and compensation assessed by the Tribunal is reduced to the extent of Rs.1,11,172/- (3,25,472 - 2,14,300). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, cross objections preferred by the claimants are dismissed, leaving the parties to bear their own costs.

08.04.2019
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No