IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.07.2019

FAO No.1760 of 2014 (O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Reshmi Devi and others ... Respondents

FAO No.4518 of 2014 (O&M)

Reshmi Devi ... Appellant

Versus

Somnath and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ishan Cooner, Advocate for the claimant.

Mr. Ashish Yadav, Advocate for the insurance company.

None for the driver and owner.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1760 and 4518 of 2014 as these have emerged out of the same award dated 09.12.2013 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed on account of injuries sustained by Reshmi Devi @ Reshmi.

FAO No.1760 of 2014 has been filed by the Oriental Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred by the claimant seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been filed to challenge quantum of compensation and findings on the question of driving licence.

The Tribunal awarded Rs.3,10,398/-, detailed hereunder:-

Reimbursement of medical expenses	Rs.41,398/-
Special diet	Rs.10,000/-
Transportation	Rs.5000/-
Pain and sufferings	Rs.38,000/-
Loss of income on account of disability	Rs.2,16,000/-

Counsel for the insurance company would argue that the injured suffered 30% permanent disability to a particular limb but the Tribunal has wrongly assessed functional disability to the extent of 20% for calculating future loss of income.

With regard to driving licence possessed by Somnath Singh, driver of bus bearing No. HP-12-C-4287, it is contended that he had licence authorizing him to drive a light motor vehicle transport but the vehicle in question is a heavy passenger vehicle, therefore, he was not duly licensed to drive the vehicle in question.

Counsel representing the claimants, on the contrary, would argue that the Tribunal has not awarded compensation qua attendant charges and loss of amenities of life on account of disability.

There is no representation on behalf of driver and owner of the vehicle despite service.

The claimants examined Dr. Umesh Modi, SMO, GH Panchkula PW-3 to prove disability and disability certificate Ex.P1. He has deposed that it was operated case of fracture acetabulum left side with fracture pubic rami and SI joints disruptions with complaint of pain, stiffness of hip with inability to squat and sit cross legs. In cross examination, he would depose that disability is in relation to injured lower limbs only and not qua whole body.

The Tribunal has assessed income of the injured by considering her to be a labourer. Taking into consideration the nature and extent of disability suffered by the claimant, I do not find any reason to interfere in findings of the Tribunal assessing functional disability to the extent of 20%, on the basis whereof future loss of income has been assessed. The claimant shall be entitle to Rs. 20,000/- for loss of amenities of life.

The injured remained hospitalized for 38 days. She is allowed Rs.10,000/- for services of attendant. The additional amount of Rs.30,000/- shall carry interest @ 7.5% per annum from the date of petition till realization.

Coming to the question of driving licence possessed by driver of offending vehicle, the Tribunal in para 18 of the award has noticed that as per copy of registration certificate (Ex.R1), unladen weight of the vehicle is 7375 kgs. Perusal of copy of the registration certificate supplied by counsel for insurance company during course of hearing would reveal that laden weight of the vehicle is 14,820 kgs. In the Motor Vehicles Act, 1988 (in short 'the Act'), gross vehicle weight has been defined under

Section 2(15) and unladen weight under Section 2(48). Section 2(15) of the Act reads as follows:-

> "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.

However, in the Act neither there is definition of laden weight nor the expression laden weight has been used in the definitions of heavy goods vehicle under Section 2(16), heavy passenger motor vehicle Section 2(17) and light motor vehicle Section 2(21).

In the Motor Vehicles Act, 1939 in Section 2(27) registered laden weight has been defined as follows:-

> "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.

The definition of registered laden weight in Section 2(27) of the Motor Vehicles Act, 1939 is pari-materia to the definition of gross vehicle weight under Section 2(15) of the Act.

Section 2(17) defines heavy passenger motor vehicle, reads thus:-

> "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;

Since in the present case, laden weight of the vehicle in question is more than 12,000 Kgs., the vehicle in question falls within the definition of heavy passenger motor vehicle under Section 2(17) of the Act. As driver of offending vehicle did not possess licence to drive a transport or heavy passenger motor vehicle, the insured is guilty of violating the terms and conditions of policy constituting defence in favour of the insurer, therefore, the insurance company is entitle to right of recovery against the insured after payment of compensation to the claimant. In this view of the matter, findings recorded by the Tribunal on the question of driving licence are liable to be modified in the aforesaid terms and ordered accordingly.

In view of what has been discussed hereinabove, the appeals are partly allowed in the aforesaid terms.

16.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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