IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.08.2019

FAO No.3614 of 2013 (O&M)

The New India Assurance Co. Ltd. ... Appellant

Versus

Janak Dulari and others ... Respondents

FAO No.3036 of 2013 (O&M)

Janak Dulari and another ... Appellants

Versus

Aabid Gul and others ... Respondents

CR No.4290 of 2013 (O&M)

The New India Assurance Co. Ltd. ... Appellant

Versus

Harjeet Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Deepak Suri, Advocate and
Mr. Neeraj Khanna, Advocate
for the insurance company.

Mr. Parminder Singh, Advocate
for claimants-Janak Dulari and Rajesh Kumar.

None for the owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3036 & 3614 of 2013 and CR-4290-2013 as these have emerged out of the same award dated

02.03.2013 passed by the Motor Accidents Claims Tribunal, Karnal, whereby compensation has been assessed on account of death of Balbir Singh son of Bala Ram and injuries sustained by Harjeet Singh in a motor vehicular accident that took place on 22.08.2010.

FAO-3036-2013 has been filed by claimants Janak Dulari and another seeking enhancement of compensation qua death of Balbir Singh whereas FAO-3614-2013 and CR-4290-2013 have been filed by the New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company').

Counsel for the insurance company would inform that aforesaid appeal and civil revision have been filed to assail findings of the Tribunal only on the question of driving licence.

CM-14770-CII-2013 in FAO-3614-2013

Heard.

Allowed as prayed for. Delay of 10 days in re-filing the appeal stands condoned.

FAO-3614-2013 and CR-4290-2013

The sole submission made by counsel for the insurance company is that as licence possessed by Aabid Gul was found to be fake and has been so held by the Tribunal and in absence of any defence plea much less evidence adduced by Javid Ahmad and others registered owners of the vehicle that they have not breached the terms and conditions of insurance policy, the insurance company is entitle to have right of recovery against the registered owners/insured of offending vehicle after payment of compensation to the claimants.

There is no representation on behalf of the insured/registered owners of the vehicle, despite service.

Perusal of findings of the Tribunal leaves no manner of doubt that the insurance company has established its plea that licence possessed by driver of offending vehicle is not valid and the same is fake. Indisputably, the insured did not contest the proceedings before the Tribunal and as such, did not raise any defence plea in respect of the driving licence. Taking into consideration the evidence adduced by the insurance company coupled with absence of any plea by the insured and evidence by them that either they had seen the driving licence with the driver at the time of his employment or found the said driving licence to be genuine, it is difficult to sustain findings of the Tribunal that the insured are not guilty of breaching the terms and conditions of insurance policy by allowing Aabid Gul to drive the vehicle without a valid licence. That being so, the insurance company shall be entitle to have right of recovery against insured/registered owners of the vehicle namely Javid Ahmad and others after payment of compensation to the claimants. Accordingly, findings of the Tribunal on issue No.3 are modified in the aforesaid terms.

In view of what has been discussed hereinbefore, the appeal and civil revision are partly allowed in the terms indicated hereinbefore.

FAO-3036-2013

The Tribunal awarded Rs.3,00,600/- detailed hereunder :-

Monthly income of the deceased Rs.5000/-

Deduction for personal expenses	$1/3^{rd}$
Multiplier	7
Loss of dependency	Rs.2,85,600/-
Transportation and exquisites	Rs.10,000/-
Loss of consortium	Rs.5000/-

The plea of claimants is that deceased was an agriculturist and also doing dairy farming thereby earning Rs.10,000/- per month. The Tribunal has noticed, in para no.23 of the award, that copy of jamabandi for the year 2003-04 Ex.P-15 was produced as an evidence of deceased owning agricultural land. Taking into consideration the land holding co-owned by the deceased coupled with that the claimants shall be entitle only to loss of managing skills of the deceased as land is available with family of Balbir Singh and minimum wage of a highly skilled labour at the relevant time, income of the deceased is assessed at Rs.6000/- per month. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. Thus, loss of dependency is calculated at Rs.3,36,000/- [(6000 x 12 x 7) – ($1/3^{rd}$ 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.4,06,000/- and the additional amount is Rs.1,05,400/- (4,06,000 - 3,00,600), 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 appeal is partly allowed in the aforesaid terms.

19.08.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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