209 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

(1) FAO No.3736 of 2014 (O&M)
Date of Decision: 13.12.2019

Bajaj Allianz General Insurance Company Ltd.
.....Appellant

Versus

Gulzaro Devi and others
........Respondents

(2) FAO No.3739 of 2014 (O&M)

Bajaj Allianz General Insurance Company Ltd.
.....Appellant

Versus

Punam Rani and others
.....Respondents

(3) FAO No.9735 of 2014 (O&M)

Gulzaro Devi
.....Appellant

Versus

Rakesh Kumar and others
.....Respondents

(4) FAO No.4759 of 2014 (O&M)

Punam Rani and others
.....Appellants

Versus

Rakesh Kumar and others
.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Vishal Aggarwal, Advocate
for the appellant in FAO-3736 & 3739-2014 and
for respondent No.3-Insurance Company
in FAO-9735 and 4759-2014.

Mr. Mukesh K.Sharma, Advocate for
Mr. Parveen K.Gaur, Advocate
for the appellant in FAO-9735-2014 and
for respondent No.1 FAO-3736-2014.

Mr. S.K. Yadav, Advocate
for the appellants in FAO-4759-2014 and
for respondent Nos.1 to 3 in FAO-3739-2014.

Service of respondent No.4 in FAO-9735-2014
is dispensed with vide order dated 01.02.2018

Mr. Pawan Attri, Advocate
for respondent Nos.1 and 2 in FAOs-9735, 4759-2014 and
for respondent Nos.4 and 5 in FAOs-3736, 3739-2014.

NIRMALJIT KAUR, J. (ORAL)

CM-11192-CII-2014 in FAO-3736-2014

For the reasons mentioned in the application, the same is allowed and the delay of 7 days in filing of the appeal is condoned.

CM-11210-CII-2014 in FAO-3739-2014

For the reasons mentioned in the application, the same is allowed and the delay of 13 days in filing of the appeal is condoned.

CM-26909-CII-2014 in FAO-9735-2014

For the reasons mentioned in the application, the same is allowed and the delay of 143 days in filing of the appeal is condoned.

CM-13472-CII-2014 in FAO-4759-2014

For the reasons mentioned in the application, the same is allowed and the delay of 7 days in filing of the appeal is condoned.

Main Cases

All the aforementioned appeals shall stand decided by this common order as the award and issue is identical.

Appeals bearing FAO-3736 & 3739-2014 are filed by the insurance company, whereas, appeals bearing FAO-9735 & 4759-2014 are filed by the respective claimants.

Learned counsel for the appellant-Insurance Company while praying for setting aside the award dated 09.01.2014 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, the Tribunal), submitted that the truck in question did not have a route permit to ply the said truck in the State of Haryana, although, he did have the route permit for plying the truck in the State of Punjab. Hence the award should be set aside on the ground above.

The said argument deserves to be rejected in view of the various judgments rendered by this High Court in the cases of *Partap Singh Vs. National Insurance Company and others, 2014 (39) R.C.R. (Civil) 521*, *Iffco Tokio General Insurance Company Ltd. Vs. Villa and others, 2016 (2) PLR 747*, *Ashok Kumar Khemaka and another Vs. Oriental Insurance Co. Ltd. and others, 2014 (3) R.C.R. (Civil) 1018* and *Gurmeet Singh and another Vs. National Insurance Company and others, 2014 (3) R.C.R. (Civil) 1013*, wherein, it is specifically held that the insurance company cannot deny to indemnify the owner of the vehicle on the ground that the said vehicle did not have a route permit. The said defence was not a valid defence under Section 149 of Motor Vehicles Act, 1988.

In the case of *Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd. & others, 2018 (3) R.C.R. (Civil) 131*, the Apex Court held that the insurer was entitled to recover the compensation from the owner and the driver, in case, the said vehicle does not have a permit. Hence, the said judgment also comes to the rescue of the respondents/claimants as in the present case, it is an admitted position that the vehicle had a permit.

In FAO-3736-2014, one of the ground raised is with respect to the quantum of compensation. It is contended that the income should have been assessed as per minimum wages, whereas, ₹6,000/- was granted in spite of the fact that there was no proof that the said deceased was a driver of JCB Machine. Secondly, the future prospects should have been granted @ 40% instead of 50% as per the judgment rendered by Hon'ble the Apex Court in the case of *National Insurance Company Ltd. versus Pranay Sethi and others, (2017) 16 SCC 680.*

On the other hand, FAO-9735-2014 has been filed by the appellants/claimants praying for enhancement on the ground that only ₹30,000/- was granted under the conventional heads, whereas, it should have been ₹70,000/- under this head in view of the judgment rendered by Hon'ble the Apex Court in the case of *Pranay Sethi* (supra).

Admittedly, the minimum wages at that point of time was ₹5,200/- per month and the Tribunal assessed it as ₹6,000/- per month. In case, ₹6,000/- is taken into consideration, the same hardly amounts to more than ₹200/- per day, which cannot be said to be in excessive. However, there is merit in the argument with respect to the future prospects, it should have been 40% instead of 50%. On the other side, the amount under the conventional heads should have been ₹70,000/- instead of ₹30,000/-, in view of the judgment rendered in the case of *Pranay Sethi* (supra) which learned counsel for the insurance company is not able to dispute. Hence, in case the award is modified under the above heads as argued by counsel for the respective parties, there would be hardly any difference in the total amount of compensation already granted. Accordingly, this Court does not deem it proper to interfere in the quantum of compensation awarded to the claimants of the deceased Deepak Kumar.

In view of the above, the appeals bearing FAOs-3736, 3739 and 9735-2014 are dismissed.

Appeal FAO-4759-2014 filed by the claimants for enhancement.

While praying for enhancement, learned counsel for the appellants/claimants submitted that no future prospects have been granted, whereas, it should have been 40%. Learned counsel for the respondent/Insurance Company is not able to dispute the same in view of the judgment rendered by Hon'ble the Apex Court in the case of *Pranay Sethi* (supra) and the amount under the conventional heads also should be ₹70,000/- instead of only ₹30,000/-.

In view of the above, the award is modified as per the calculation provided under:-

Sr. No.	**Head**	**Amount assessed**
1	Income	₹6000/- per month
2	Future Prospects	40% (6000 x 40% = ₹2400) ₹6000 + 2400 = ₹8400/-
3	Deduction	1/3rd 1/3rd of 8400 = ₹2800/- 8400 – 2800 = ₹5600/-
4	Multiplier	18 5600 x 12 x 18 = ₹12,09,600/-
5	Conventional Heads.	₹70,000/-
6	Total	₹12,79,600/-
7	Compensation awarded by the Tribunal	₹8,94,000/-
8	Differences	₹1279600 – 894000 = ₹3,85,600/-

Thus, the enhanced compensation of ₹3,85,600/- be paid to the appellants in FAO-4759-2014 within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition till its realization.

In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

Appeal bearing FAO-4759-2014 is accordingly allowed in the above terms and the award is modified only to the said extent.

(NIRMALJIT KAUR)
JUDGE

13.12.2019
sandeep

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No