IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 5.7.2019

1. **FAO No. 1349 of 2016(O&M)**

United India Insurance Co. Ltd. …..Appellant

VERSUS

Sukhpal Kaur and others .....Respondents

Present: Mr. Ram Avtar, Advocate for the appellant.

Mr. Swarn Sandhir, Advocate for respondents No.1 and 2.

Mr. Sandeep Kotla, Advocate for respondent No.4.

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2. **FAO No. 2190 of 2016(O&M)**

Sukhpal Kaur and another …..Appellants

VERSUS

Bhal Singh and others .....Respondents

Present: Mr. Swarn Sandhir, Advocate for the appellants.

Mr. Ram Avtar, Advocate for the insurance company.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1349 and 2190 of 2016 as these have emerged out of the same award dated 24.11.2015 passed by the Motor Accidents Claims Tribunal, Patiala (in short 'the Tribunal') whereby compensation has been assessed on account of death of Ram Sarup in a motor vehicular accident that took place on 15.11.2013.

FAO No.1349 of 2016 has been filed by United India Insurance Co. Ltd. (hereinafter referred to as 'insurance company') whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

FAO No.1349 of 2016

Counsel for the insurance company would argue that the insurer raised a specific plea that the vehicle was being plied in the State of Punjab without a route permit when otherwise vehicle was registered in the State of Rajasthan. An application was filed by the insurance company calling upon owner of the offending vehicle to produce documents including route permit and the Tribunal issued direction for production of documents but the registered owner failed to do so. It is argued that the Tribunal neither framed an issue with regard to the insured being guilty of violating the terms and conditions of policy for non-possessing a route permit nor adverted to the said question at the time of final disposal. He would pray that the Tribunal may be directed to frame a specific issue if the vehicle was being plied without a permit and route permit and the matter may be remitted to the Tribunal for deciding the said issue.

Counsel representing respondent No.4 would urge that after framing of issues, the matter remained pending before the Tribunal for quite some time but the insurance company never pressed for framing of an additional issue with regard to permit or route permit and as such the insurance company cannot be allowed to raise such a plea in appeal.

Be that as it may, the insurance company raised a specific plea in the preliminary objection that the vehicle was plied without route permit. Application filed by the insurance company for production of documents including route permit was allowed by the Tribunal and the registered owner was directed to produce those documents but he failed to do so. While deciding the matter finally, the Tribunal did not advert to the question of failure of the owner to produce the route permit or entitlement of the insurance company to press for right of recovery in this regard. In the given scenario, interest of justice would be served if the matter is remitted to the Tribunal for deciding the question "if the vehicle in question was being plied without a permit and route permit. If so, to what effect." Accordingly, the appeal preferred by the insurance company is disposed of. The matter is remitted to the Tribunal for deciding the aforesaid issue after permitting the parties i.e. the insurance company and owner of the vehicle to adduce evidence in support of their respective contentions. The parties through their counsel are directed to appear before the Tribunal on 30.07.2019. The Tribunal shall dispose of the matter without calling upon the claimants and driver of the vehicle to appear as the issue with regard to permit and route permit is between the insurance company and the insured. The Tribunal shall put its best efforts to dispose of the matter within a period of three months of the parties putting in appearance.

<u>FAO No.2190 of 2016</u>

The Tribunal awarded Rs.11,21,064/- detailed hereunder:-

Monthly income of the deceased	Rs.7000/-
Deduction for personal expenses	1/3rd
Multiplier	16
Loss of dependency	Rs.8,96,064/-
Loss of love and affection	Rs.1,00,000/-
Loss of consortium	Rs.1,00,000/-
Expenses on funeral	Rs.25000/-

The sole submission made by counsel for the claimants is that the claimants may be extended benefit of addition in income for future prospects.

Counsel for the insurance company, on the contrary, would urge that compensation allowed under conventional heads may be restricted to Rs.70,000/-. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270** and **Sebastiani Lakra and others Vs. National Insurance Co. Ltd. and another, AIR 2018 SC 5034.**

The deceased was held to be 40 years old. There is no material on record that he was less than 40 years of age. That being so, claimants shall be entitle to addition in income for future prospects at the rate of 25%. In this manner, loss of dependency comes to Rs.11,20,000/- [Rs.13,44,000/- (Rs.7000 x 12 x 16) + Rs.3,36,000/- (25% addition towards future prospects) – Rs.5,60,000/- (1/3rd deduction towards personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of aforesaid judgments, detailed hereunder:-

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

In view of the above, total compensation comes to Rs.11,90,000/- and the additional amount is Rs.68,936/- (Rs. 11,90,000/- - Rs.11,21,064/-) 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 5, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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