IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

<u>Date of decision: 14.03.2019</u>

FAO No.1460 of 2016 (O&M)

National Insurance Company Ltd. ... Appellant

Versus

Nirmala Devi and others ... Respondents

FAO No.1677 of 2016 (O&M)

National Insurance Company Ltd. ... Appellant

Versus

Vidhya Devi and others ... Respondents

FAO No.2788 of 2016 (O&M)

Smt. Nirmala Devi and another ... Appellants

Versus

Sant Raj Shekh and others ... Respondents

FAO No.3832 of 2016 (O&M)

Smt. Vidhya Devi and another ... Appellants

Versus

Sant Raj Shekh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RC Kapoor, Advocate for the insurance company.
Mr. Surinder Dagar, Advocate for the claimants.

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<u>REKHA MITTAL, J. (Oral)</u>

This order will dispose of FAO Nos.1460, 1677, 2788 and

3832 of 2016 as these have emerged out of the same award dated 30.10.2015 passed by the Motor Accidents Claims Tribunal, Gurgaon whereby compensation has been assessed on account of death of Pawan Kumar @ Pankaj and Parveen in a motor vehicular accident that took place on 29.03.2014.

FAO Nos.1460 and 1677 of 2016 have been filed by the National Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas the other two appeals have been preferred by the claimants in regard to death of Pawan Kumar and Parveen seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeals have been preferred to assail quantum of compensation as well as on the question of driving licence.

FAO Nos.1460 and 2788 of 2016

With regard to death of Pawan Kumar @ Pankaj, the Tribunal has awarded Rs.8,85,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5000/-
2. Addition in income for future prospects	50%
3. Multiplier	18
4. Deduction for personal expenses	50%
5. Loss of dependency	Rs.8,10,000/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of love and affection	Rs.50,000/-

Counsel for the insurance company would argue that the deceased was less than 17 years of age and there is no evidence with regard to income of the deceased. Addition in income for future prospects cannot be more than 40% and compensation allowed under conventional heads is liable to be restricted to Rs.30,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034.**

Counsel representing the claimants, on the contrary, has urged that income of the deceased assessed by the Tribunal is on lower side. No deduction for personal expenses may be allowed in the light of judgment of Hon'ble the Supreme Court **Kishan Gopal and another vs. Lala and others 2013 (4) RCR (Civil) 276**. He would state that claimants may be allowed loss of consortium @ Rs.40,000/- (each) in the light of judgment of Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333**.

The Tribunal, in para 14 of the award, has noticed that the deceased was born on 22.12.1997 and he was more than 16 years of age. The claimants produced on record document Ex.P10, secondary school examination certificate wherein date of birth of the deceased has been recorded. Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.5500/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%.

The plea of claimants that no deduction for personal and living expenses should be made by relying upon judgment in **Kishan Gopal and another's case (supra)** is highly misconceived and untenable as in the present case income of the deceased has been assessed on the basis of minimum wage as against notional income of a non-earning person. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.8,31,600/- [(5500 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

The plea of claimants for grant of consortium to each of the claimants in the light of judgment in **Magma General Insurance Co. Ltd.'s case (supra)** is not tenable in view of decision by the Constitution Bench in **Pranay Sethi and others's case(supra)** and decision by a three Judge Bench in **Sebastiani Lakra and others's case (supra)** subsequent to decision in **Magma General Insurance Co. Ltd.'s case (supra).**

Total compensation is Rs.8,61,600/- and compensation assessed by the Tribunal is reduced to the extent of Rs.23,400/- (8,85,000 – 8,61,600). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

With regard to driving licence, it is argued that the insurance company sought information under the RTI Act, 2005 and as per report Ex.R3, the licence was found to be fake. It is further argued that the Tribunal has wrongly refused to rely upon the report. In support of his contention, he has relied upon judgments of Madhya Pradesh High Court **Oriental Insurance Company Ltd. Vs. Mulayam Bai and others, 1999 ACJ 727** and **Daljeet Kaur and others Vs. Fakru and another, 2008 ACJ 949.**

The Tribunal, while dealing with the question of driving licence has held that mere tendering of verification report is not sufficient and the insurance company must examine clerk of the concerned licensing authority to depose on the basis of relevant record and the owner shall have an opportunity to cross examine him. The Tribunal has relied upon judgment of this Court **National Insurance Company Ltd. Vs. Smt. Asha Rani and others, 2008(1) RCR (Civil) 5**. Indisputably, the insurance company did not examine a witness of the concerned licensing authority to prove on the basis of records that licence in question was not issued in favour of Sant Raj Shekh, driver of the offending vehicle. This Court in **Smt. Asha Rani and others's case (supra)** has held that the report was only tendered before the Tribunal and no witness has appeared from the licensing authority to prove the report. The report does not constitute any evidence without being proved by the competent witness from the licensing authority. There is nothing on record suggestive of the fact that private respondents before the Tribunal ever admitted correctness of the report Ex.R3. In the given circumstances, the insurance company cannot derive any advantage to its contentions from the judgments passed by the Single Judge Benches of Madhya Pradesh High Court. Accordingly, findings of the Tribunal that the insurance company has not been able to establish that there was breach of terms and conditions of insurance policy are affirmed.

The appeals are disposed of in the aforesaid terms.

FAO Nos.1677 and 3832 of 2016

In view of findings recorded in FAO Nos.1460 and 2788 of 2016, total compensation is Rs.8,61,600/- and compensation assessed by the Tribunal is reduced to the extent of Rs.23,400/- (8,85,000 – 8,61,600) however, findings of the Tribunal that the insurance company has not been able to establish that there was any breach of terms and conditions of insurance policy are affirmed. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeals are disposed of in the aforesaid terms.

14.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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