IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 28.08.2019

FAO 1767 of 2016 (O&M)

M/s Wonder Oven Recipes ....*Appellant*

Versus

Nirmal Kaur and others ....*Respondents*

FAO 3621 of 2016 (O&M)

Nirmal Kaur and others ....*Appellant*

Versus

M/s Wonder Oven Recipes and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Gaurav Sharma, Advocate
for the appellant (FAO 1767 of 2016)
and respondent No. 1 (FAO 3621 of 2016)

Ms. Reena, Advocate
for Mr. B S Jaswal, Advocate
for the appellants (FAO 3621 of 2016)
and respondents 1 to 3 (FAO 1767 of 2016)

Ms Vandana Malhotra,Advocate
for the insurance Company

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 09.12.2015 passed by the Motor Accidents Claims Tribunal, Amritsar (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Jasbir Singh in a motor vehicular accident that took place on 15.12.2013.

FAO 1767 of 2016 has been filed by M/s Wonder Oven Recipes (owner of Tempo Tata Super Ace PB-02-2013-Temp BT-9074 and permanent No.PB 02-CC-6001) whereas other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the appellant in FAO 1767 of 2016 would inform that the appeal has been filed to assail findings of the Tribunal on issue No. 3 on the basis whereof, the insurance company has been given right of recovery against owner and driver of offending vehicle.

FAO 1767 of 2016

The sole submission made by counsel for the appellant is that Jagraj Singh, driver of the aforesaid vehicle was holding licence, authorizing him to drive a light motor vehicle (non-transport) and vehicle in question has gross vehicle weight 2180 kg. The vehicle in question falls within the purview of 'light motor vehicle' defined under Section 2 (21) of the Motor Vehicles Act, 1988 (in short, 'the Act'), therefore, the driver was competent to drive the vehicle in question. In support his contention, he has placed reliance upon judgment of Hon'ble the Supreme Court ***Mukund Dewangan vs Oriental Insurance Company Limited 2016 (5) R.C.R. (Civil) 34***.

Counsel for the insurance company has gone through copy of registration certificate of the offending vehicle and has conceded that gross vehicle weight was 2180 kilograms, thus, vehicle is a light motor vehicle. However, it is submitted that since the vehicle was being used for commercial purposes and driving licence possessed by the driver did not contain an endorsement of transport, he did not have effective licence to drive the vehicle in question.

Be that as it may, it is undisputed position of the case that the vehicle in question falls within the purview of 'light motor vehicle' defined under Section 2 (21) of the Act. When the case is examined in the light of judgment in *Mukund Dewangan's* case (supra), it is difficult to sustain findings of the Tribunal that licence possessed by the driver was not sufficient to authorize him to drive the vehicle in question or the insured is guilty of breaching terms and conditions of insurance policy, constituting defence in favour of the insurer. In this view of the matter, findings of Tribunal on issue No. 3 cannot be allowed to sustain and accordingly set aside. This apart, in absence of privity of contract between the insurer and driver, no recovery right otherwise can be given against the driver. As a consequence, issue No. 3 is answered against the insurance company and in favour of the insured.

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

FAO 3621 of 2016

The Tribunal awarded Rs.8,81,000/-, detailed hereunder:-

-Monthly income of the deceased	9,000/-
-Multiplier	7
-Loss of dependency	Rs.7,56,000/-
-Loss of consortium	Rs.1,00,000/-
-Conventional expenses	Rs.25,000/-

The claimants examined Parveen Joshi (PW3) and he proved income tax returns filed by the deceased prior to accident. The Tribunal, in para 19 of the award, has noticed that as per income tax returns for the assessment year 2011-12, 2012-13 and 2013-14, income of the deceased was increasing steadily. In the latest income tax return for the year 2013-14 Ex.PW3/C, income of the deceased is Rs.2,20,150/- per annum which is from business/profession. Taking into consideration income of the deceased reflected in the latest income tax return, annual income of the deceased is assessed at Rs.2,20,150/-.

The claim has been preferred by the widow and two major sons of the deceased, thus, admissible deduction for personal expenses would be 1/3rd. As the deceased was born on 11.09.1952 recorded in driving licence, he was more than 61 years old at the time of occurrence. As such, claimants shall not be entitle to addition in income for future prospects. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is Rs.10,27,367/- [Rs.15,41,050/- i.e. 2,20,150 x 7 - Rs.5,13,683/- (1/3rd deduction)].

Under conventional heads, claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

In view of the above, total compensation is Rs.10,97,367/- and additional amount is Rs.2,16,367/- (10,97,367-8,81,000), 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 three years.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

28.08.2019
Mohan Bimbra

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