IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 4431 of 2014

Date of Decision: March 13 , 2019.

Surinder Kaur and others ...... APPELLANT(s)

Versus

Sanjeev Kumar and others ...... RESPONDENT (s)

2. FAO No. 6967 of 2014

National Insurance Company Ltd. ...... APPELLANT(s)

Versus

Surinder Kaur and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Chandan Deep Singh, Advocate
for the appellant in FAO No.4431 of 2014.

Mr. Rajnish Malhotra, Advocate
for the appellant in FAO No.6967 of 2014

Mr. Pardeep Sharma, Advocate for
Mr. Subhash Goyal, Advocate
for respondent No.3 in FAO No.4431 of 2014.

Mr. Gurcharan Dass, Advocate
for respondent No.3 in FAO No.4431 of 2014 and
for respondent No.7 in FAO No.6967 of 2014.

*****

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

*****

LISA GILL, J.

This judgment shall dispose of FAO No.4431 of 2014 (Surinder

Kaur and others v. Sanjeev Kumar and others) and FAO No.6967 of 2014 (National Insurance Company Ltd. v. Surinder Kaur and others) which arise out of award dated 28.02.2014 passed by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as, the 'Tribunal'). FAO No.6967 of 2014 has been filed by the Insurance company challenging its liability to pay the compensation in this case. FAO No.4431 of 2014 has been filed by the claimants seeking enhancement of the compensation awarded to them.

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of death of Jagwinder Singh, who lost his life in a motor vehicle accident which took place on 12.03.2011. FIR No.38 dated 13.03.2011 (Ex.PX) under Sections 279/427/304A IPC was registered against respondent No.1 at the instance of CW2 Ramesh Kumar. Learned Tribunal on considering the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of three-wheeler bearing registration No. PB-10BU-1356 by its driver respondent No.1-Sanjeev Kumar.

Learned Tribunal awarded a total sum of ₹6,62,000/- to the claimants. Deceased-Jagwinder Singh was held to be 38 years old at the time of the accident. Income of Jagwinder Singh was assessed as ₹20,384/- per month Deduction to the extent of 50% on account of personal expenses was effected. Multiplier of 5 was applied. ₹25,000/- each was awarded on account of loss of estate and funeral expenses.

While observing that driver of the offending vehicle i.e., a three-wheeler, was holding a licence authorizing him to drive a Light Motor Vehicle, learned Tribunal held that this license did not authorize the driver to drive a three-wheeler. Therefore, the Insurance company was afforded the right to recover the compensation from respondents – driver and owner of the offending vehicle after making good the payment of compensation to the claimants.

It is agitated by learned counsel for the Insurance company that in view of the finding that the driver of the offending vehicle was not holding a valid license for driving the three-wheeler, the appellant-Insurance company should be completely exonerated of its liability to pay the compensation to the claimants. It is thus prayed that the appeal filed by the Insurance company be allowed.

Heard learned counsel for the parties.

Learned counsel for the appellant-Insurance company is unable to deny that the Hon'ble Supreme Court in **Mukund Dewangan v. Oriental Insurance Company Ltd.**, ***2017(4) RCR(Civil) 111*** has held that a driver who is holding a licence to drive a 'Light Motor Vehicle' and was driving a 'transport vehicle' of that class, is not required to additionally obtain a specific endorsement to that effect. It has been held that,

> "Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including

transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed."

There is thus no merit in the appeal (FAO No.6967 of 2014) filed by the Insurance company.

In respect to FAO No.4431 of 2014, learned counsel for the appellants-claimants submits that income of the deceased, who was working as Ahlmad has been wrongly assessed as ₹20,384/- whereas he was drawing a salary of ₹30,115/- per month as per Salary Certificate (Ex.P1). Furthermore, increment on account of future prospects should be afforded and compensation under the conventional heads is meagre. It is thus prayed that the amount of compensation awarded to the claimants be enhanced accordingly.

Learned counsel for respondent-Insurance company however refutes the abovesaid averments and submits that the impugned award does not call for any enhancement of the compensation in the facts and circumstances of the case.

Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record.

There is no dispute regarding death of Jagwinder Singh in a motor vehicle accident which took place on 12.03.2011 due to the rash and negligent driving of the offending three wheeler bearing registration No.PB-10BU-1356 by respondent No.1-Sanjeev Kumar. Deceased-Jagwinder Singh was 38 years old at the time of the accident. He was working as Ahlmad in District Courts at Ludhiana. His salary certificate (Ex.P1) was proved on record by CW3 Rupinder Singh, Clerk in COC office in the court of Civil Judge(Senior Division), Ludhiana. As per the said salary certificate, Jagwinder Singh (deceased) was in receipt of ₹29,098/- per month as salary for each month. There is a hand written note of addition of 5% as DA, but the same has to be ignored, especially keeping in view the statement of CW3 Rupinder Singh wherein salary of the deceased is stated to be ₹29,098/- per month. Learned Tribunal has wrongly subtracted the amount on account of deduction of GPF, GIS etc. However, it is only the component of income tax of ₹900/- which is to be deducted from the salary of ₹29,098/-. Income of the deceased is, thus, assessed as ₹28,198/- per month after deducting the component of income tax.

Addition in income at the rate of 50% on account of future prospects has to be afforded in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Deceased-Jagwinder Singh was a bachelor, therefore, deduction to the extent of 50% towards personal expenses is to be effected. Multiplier of 15 has been rightly applied. ₹15,000/- each (instead of ₹25,000/- each) is awarded to the claimants on account of funeral expenses and loss of estate. ₹40,000/- is awarded to the claimants No.1 and 2 on account of loss of filial consortium.

Appellants-claimants are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	28,198 p.m. i.e. 3,38,376/- per annum
2.	Total income after addition at the rate of 50% on account of future prospects	3,38,376 + (3,38,376 **x** 50%) = 5,07,564
3.	Net income after 50% deduction on account of personal expenses	5,07,564 – (5,07,564 **x** 505) = 2,53,782
4.	Total dependancy after applying a multiplier of 15	(2,53,782 **x** 15) = 38,06,730
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium	40,000
	Grand Total	₹38,76,730/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the entire amount at the rate of 7.5% per annum, instead of 6%, from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

FAO No.4431 of 2014 is accordingly disposed of. FAO No.6967 of 2014 filed by the Insurance company is dismissed.

(LISA GILL)
JUDGE

March 13 , 2019.
'om'

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