IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

217 Date of decision: 20.09.2019

FAO No.2096 of 2016 (O&M)

Smt. Anita and ors. ... Appellants

Versus

Harmit Singh and ors. ... Respondents

FAO No.2252 of 2016 (O&M)

Smt. Sudha and ors. ... Appellants

Versus

Harmit Singh and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Yash P. Khullar, Advocate for the claimants.
Respondent No.2 proceeded against ex parte.
Mr. Vishal Sharma, Advocate for
Mr. Sachin Ohri, Advocate for the insurance company.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2096 and 2252 of 2016 as these have emerged out of the same award dated 02.11.2015 passed by the Motor Accidents Claims Tribunal, Palwal whereby compensation has been assessed on account of death of Naresh and Suresh in a motor vehicular accident that took place on 17.07.2014.

Both the appeals have been filed by the claimants seeking enhancement of compensation.

FAO No.2096 of 2016

Counsel for the appellants would state that he does not press the appeal for enhancement of compensation. However, it has been argued that even if the insured has violated any terms and conditions of policy by failing to produce route permit and fitness certificate, the insurance company, at best, can press for right of recovery against the insured but cannot escape liability to pay compensation to the claimants, being third party.

Perusal of findings of the Tribunal, in paras 36 and 37 of the award, would reveal that the Tribunal by relying upon copy of notice Ex.R2 purported to be issued by the insurance company to registered owner of the vehicle under Order 12 Rule 8 read with Section 151 CPC for production of documents namely copy of route permit and fitness certificate and failure of the insured to produce these documents has exonerated the insurance company of liability to pay compensation.

Perusal of the award would reveal that the Tribunal has framed issue No.4, reads thus:-

> Whether respondent No.2 has violated the terms and conditions of the insurance policy, if so its effect?OPR3

In para 9 of the written statement, insurance company has raised a plea that truck was driven without route permit and fitness certificate in violation of terms and conditions of policy. Non-possessing of a route permit or/and fitness certificate is not a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). The Tribunal without examining relevant provisions of the Act has proceeded to exonerate the insurance company thereby putting the claimants in a difficult situation to realize the compensation awarded. In this view of the matter, findings of the Tribunal recorded in para 36 of the award on the basis whereof the insurance company has been exonerated of liability to pay compensation cannot be allowed to sustain and are accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation.

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

FAO No.2252 of 2016

The Tribunal awarded Rs.12,15,500/-, detailed hereunder:-

Monthly income of the deceased	Rs.5000/-
Addition in income for future prospects	50%
Multiplier	15
Deduction for personal expenses	1/4th
Loss of dependency	Rs.10,12,500/-
Expenses on funeral	Rs.10,000/-
Loss of consortium	Rs.10,000/-
Medical expenses	Rs.1,83,000/-

The plea of claimants is that deceased was working as helper in IMD Industries Services Ltd. The claimants did not examine any witness to prove employment and income of the deceased. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.5800/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.10,96,200/- [(5800 x 12 x 15) + (40% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

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

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

A sum of Rs.1,83,000/- towards medical expenses allowed by the Tribunal is affirmed.

Total compensation is Rs.13,49,200/- and additional amount is Rs.1,33,700/- (13,49,200 - 12,15,500) payable with interest @ 7.5% per annum from the date of petition till realization to Geeta and Kavita minor daughters of the deceased in equal ratio, to be invested in fixed deposit till they attain majority or for a period of three years, whichever is later. The insurance company shall be jointly and severally liable to pay compensation to the claimants in view of findings recorded in FAO No.2096 of 2016.

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

20.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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