

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

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**Date of decision: 31.01.2019**

Rajesh

**FAO No.3612 of 2015 (O&M)**

... Appellant

Versus

Smt. Manjeet Kaur and others

... Respondents

**FAO No.2829 of 2016 (O&M)**

Smt. Manjeet Kaur and others

... Appellants

Versus

Rajesh and others

... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present :   None for the owner-cum-driver.  
              None for the claimants.  
              Mr. S.S. Sidhu, Advocate for the insurance company.  
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**REKHA MITTAL, J. (Oral)**

This order will dispose of FAO Nos.3612 of 2015 and 2829 of 2016 as these have emerged out of the same award dated 14.11.2014 passed by the Motor Accidents Claims Tribunal, Kaithal whereby compensation has been assessed on account of death of Naresh Kumar in a motor vehicular accident that took place on 03.12.2013 and liability to pay compensation has been fastened against the driver-cum-owner of offending vehicle bearing temporary No.HR-99-KGT-9379.

FAO No.3612 of 2015 has been filed by owner-cum-driver of offending vehicle whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

**CM No.10679-CII of 2015 in FAO No.3612 of 2015**

Heard.

Allowed as prayed for. Delay of 86 days in refiling the appeal stands condoned.

**Main Cases**

The Tribunal has awarded compensation of Rs.5,30,336/- in a claim preferred under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act'), detailed hereunder:-

|                                              |                   |
|----------------------------------------------|-------------------|
| 1. Monthly income of the deceased            | Rs.3200/-         |
| 2. Multiplier                                | 17                |
| 3. Deduction for personal expenses           | 1/3 <sup>rd</sup> |
| 4. Loss of dependency                        | Rs.4,35,336/-     |
| 5. Expenses on last rites and transportation | Rs.20,000/-       |
| 6. Loss of consortium                        | Rs.75,000/-       |

The compensation allowed by the Tribunal under conventional heads is much more than what can be permitted in view of Second Schedule appended to Section 163-A of the Act. Accordingly, compensation allowed under conventional heads is modified to the effect that claimants shall be entitle to Rs.9500/-, detailed hereunder:-

|                       |           |
|-----------------------|-----------|
| 1. Funeral expenses   | Rs.2000/- |
| 2. Loss of consortium | Rs.5000/- |
| 3. Loss to estate     | Rs.2500/- |

As a consequence, compensation allowed by the Tribunal is reduced to the extent of Rs.85,500/- (95,000 – 9500).

The driver-cum-owner of the offending vehicle has preferred the appeal to challenge quantum of compensation and exoneration of the insurance company of liability to pay compensation. The compensation has been reduced to the tune of Rs.85,500/- in view of the discussion made hereinbefore.

This brings the Court to the issue of insurance company being exonerated of liability to pay compensation. The Tribunal, in paras 37 and 38 has held that on the day of occurrence, the vehicle did not have a registration certificate as temporary registration had already expired on 12.03.2013. The insurance company can neither seek exoneration of liability to pay compensation nor can press for right of recovery for want of registration certificate as no such defence is available to the insurance company under Section 149(2) of the Act.

Perusal of the grounds of appeal preferred by Rajesh would reveal that no such averment has been raised that the vehicle in question did not require a permit to ply at a public place. As there was no permit to bring the vehicle at a public place, the insured is guilty of violating the terms and conditions of policy constituting defence in favour of the insurance company. In the given circumstances, the insurance company is entitle to press for right of recovery against the insured only after indemnifying the claimants. That being so, the insurance company shall be liable to pay

compensation to the claimants but thereafter would be entitle to recover the same from the insured/owner of the vehicle. Accordingly, findings of the Tribunal exonerating insurance company of liability to pay compensation are modified in the aforesaid terms.

In view of what has been discussed hereinabove, the appeals stand disposed of in the aforesaid terms. As the appeal (FAO No.2829 of 2016) has been disposed of on merit, application for condonation of delay is of academic relevance only.

31.01.2019

ashok

Whether speaking/reasoned:  
Whether reportable:

(REKHA MITTAL)

JUDGE

Yes / No  
Yes / No