

FAO-4065-2015(O&M) &
FAO-445-2016(O&M)

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

(1) FAO-4065-2015(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Bimla Devi and others

...Respondents

(2) FAO-445-2016(O&M)

Smt.Bimla Devi and others

...Appellants

Versus

Surender Singh and others

...Respondents

Date of Decision:-30.5.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.P. Gupta, Advocate
for the appellant in FAO-4065-2015 and
for respondent No.2 in FAO-445-2016.

Mr.Ashwani Bhardwaj, Advocate
for respondent No.6 in FAO-4065-2015 and for
respondent No.1 in FAO-445-2016.

Mr.Sandeep Thakan, Advocate
for the appellants in FAO-445-2016 and for
respondents No.1 to 5 in FAO-4065-2015.

H.S. MADAAN, J.

CM-1338-CII-2016 in
FAO-445-2016

Prayer made in the application is for condoning the delay of 143 days in filing the appeal.

Heard. Sufficient cause has been shown for condoning of delay in filing of the appeal. The application is, therefore, accepted and the delay of 143 days in filing of the appeal is condoned.

FAO-4065-2015(O&M) &
FAO-445-2016(O&M)

By this order, I shall dispose of two FAOs i.e. FAO-4065-2015(O&M) filed on behalf of appellant – United India Insurance Company Ltd. and FAO-445-2016(O&M) filed on behalf of appellants – Smt.Bimla Devi and others, which have arisen out of the same accident.

On account of death of Sh.Deepak in a motor vehicular accident, which took place on 17.2.2013 at about 11:00 O'clock in the area of in between village Hajampur to Narela statedly on account of rash and negligent driving of Pick up vehicle bearing registration No.HR-61B-4094(hereafter referred to as the offending vehicle) by respondent No.1 – Surender, the legal representatives of deceased namely his mother – Smt.Bimla Devi, aged about 42 years, father – Sh.Shamsher Singh aged about 45 years, brother – Pardeep aged about 21 years, another brother Surjeet aged about 18 years and minor sister – Seema aged about 16 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e.

Surender – driver and owner as well as United India Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lacs along with interest.

Notice of the claim petition was given to both the respondents, who put in appearance and offered a contest. However, vide Award dated 17.3.2015, the Tribunal allowed the claim petition and granted compensation of Rs.15,16,376/- along with interest @ 6% per annum from the date of filing of the petition till actual payment to the claimants payable by both the respondents jointly and severally.

The claimants and insurance company felt aggrieved by the award and they have filed separate appeals before this Court.

Notices of the appeals were issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The main contention of learned counsel for the appellant – insurance company in FAO-4065-2015 has been that respondent No.1 was having licence authorizing him to drive light motor vehicle but he was driving light transport vehicle for which a separate endorsement was required and the Tribunal did not consider that aspect properly and wrongly held that respondent No.1 was authorized to drive the offending vehicle and that no violation of any terms and conditions of the insurance policy had taken place. In support of his contention, he has referred to judgment M/s Bajaj Alliance General Insurance Co. Ltd. Versus Rambha Devi and others, (2018) 2 SceJ 1155, where the question

whether a person licensed to drive a light motor vehicle is *ipso facto* entitled to drive a transport vehicle in that category, decided by a Bench of three Judges in **Mukund Dewangan Vs. Oriental Insurance Company Ltd. (2017) 14 SCC 663** has been referred to for consideration by a larger bench.

This argument has been repelled by learned counsel for the respondents/claimants contending that the Tribunal has rightly drawn the conclusion with regard to respondent No.1 having a valid licence to drive the offending vehicle and no fault can be found with the same.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal has not fell in error in coming to the conclusion that respondent No.1 was holding a valid and effective driving licence on the date of accident. The Tribunal has cited a judgment in support of that conclusion. With regard to judgment referred to by learned counsel for the appellant, the matter decided in Mukund Dewangan Vs. Oriental Insurance Company Ltd. case (supra) has been referred to larger Bench and it has no where been held that a driver possessing driving licence for driving light motor vehicle cannot legally drive light goods vehicle. Therefore, such contention of learned counsel for the appellant does not merit any attention.

Next coming to the objection raised with regard to quantum of compensation awarded. The Tribunal considering the fact that deceased was aged about 23 years and was serving in ITBP earning Rs.17,814/- per month as per his salary certificate Ex.PW3/B had not added any amount towards future prospects. In view of judgment **National Insurance**

Company Limited Versus Pranay Sethi and Ors., 2017(4)

RCR(Civil)1009, when the deceased had a permanent job and was below age of 40 years, an addition of 50% of the actual salary is to be made to the income of the deceased towards future prospects. Doing that the monthly income of the deceased is taken as Rs.17,814 + 8,907 = Rs.26,721/-.

Since the deceased was a bachelor 50% of the amount is to be deducted towards his personal expenses in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**. Doing that the dependency of claimants comes out to Rs.13,360/- per month, annual dependency comes out to Rs.13,360 x 12 = Rs.1,60,320/-.

The Tribunal fell in error in adopting multiplier of 14 considering the ages of parents of the deceased. As has been held in **National Insurance Company Limited Versus Pranay Sethi and Ors.** case (supra), multiplier is to be used keeping in view the age of the deceased and not that of the dependents. In view of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra) when the deceased was in the age group of 15 to 25, multiplier of 18 is to be applied. Doing that the compensation payable comes out to Rs.1,60,320 x 18 = 28,85,760/-.

The Tribunal has granted Rs.20,000/- for loss of love and affection, loss of income, transportation and performance of last rites. Whereas in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled

to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 28,85,760 + 30,000 = 29,15,760/-.

The Tribunal has awarded compensation of Rs.15,16,376/-.

In this way, the enhanced amount comes out to Rs.13,99,384/- (29,15,760 - 15,16,376). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.13,99,384/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the FAO-445-2016 filed on behalf of the claimants is allowed partly with costs.

Consequently, FAO-4065-2015 filed on behalf of the insurance company stands dismissed.

30.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No