**In the High Court of Punjab and Haryana at Chandigarh**

**Date of Decision: 14.5.2019**

**FAO No. 5752 of 2014(O&M)**

**The New India Assurance Company Limited**

**---Appellant**

**versus**

**Gian Kaur and others**

**---Respondents**

**FAO No. 5753 of 2014(O&M)**

**The New India Assurance Company Limited**

**---Appellant**

**versus**

**Simranjeet Singh and others**

**---Respondents**

**FAO No. 2271 of 2015(O&M)**

**Gian Kaur and others**

**---Appellants**

**versus**

**Madan Lal @ Maddi and others**

**---Respondents**

**FAO No. 2717 of 2015(O&M)**

**Simranjeet Singh and others**

**---Appellants**

**versus**

**Madan Lal @ Maddi and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

Present: Mr. R.C.Gupta, Advocate
for the appellant-insurance company
Mr. Vivek Thakur, Advocate
for the appellants in FAO Nos. 2271 and 2717 of 2015

Mr. Paramjit Batta,Advocate,
for respondents No. 5 and 6 in FAO- 5753 of 2014
for respondents No. 7 and 8 in FAO- 5752 of 2014

Mr. Puneet Sharma, Advocate
for respondent No. 3 in FAO Nos. 2271 and 2717 of 2015

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**Rekha Mittal, J.**

This order will dispose of FAO Nos. 5752, 5753 of 2014, 2271 and 2717 of 2015 as these have emerged out of the same award dated 12.12.2013 passed by the Motor Accidents Claims Tribunal, Kapurthala (in short "the Tribunal") whereby compensation has been assessed on account of death of Darshan Singh and Seema in a motor vehicular accident that took place on 15.1.2012.

FAO Nos. 5752 and 5753 of 2014 have been filed by the New India Assurance company (hereinafter referred to as "insurance company") whereas the other appeals have been filed by the claimants seeking enhancement of compensation.

**FAO Nos. 5752 and 5753 of 2014**

Counsel for the insurance company has assailed its liability to pay compensation primarily on two counts. The first submission made by counsel is that since the present is a case of head on collision between the offending bus and car driven by Darshan Singh (since deceased), claimants are not entitle to compensation qua death of Darshan Singh to the extent of negligence attributable to him. Another submission made by counsel is that the insured is guilty of violating the terms and conditions of policy, therefore, the insurance company has right of recovery against the insured after payment of compensation to the claimants.

Counsel representing the respondents have supported findings of the Tribunal both on issue No. 1 as well as liability of the insurance company to pay compensation by way of indemnification of the insured/owner of offending bus.

The claimants examined Sukhwinder Singh, brother of Darshan Singh, alleged eye witness to the occurrence. He tendered into evidence his affidavit Ex. AW4/A. In para 3 of the affidavit, he has narrated as to how the occurrence in question took place because of rash and negligent driving of offending bus bearing No. PB-07-Q-6297. In his cross examination he has admitted that the accident was from front side but voluntarily stated that accident occurred because of negligence, fast speed of bus and due to hitting the car from wrong side. Perusal of further cross examination of Sukhwinder Singh would reveal that there is no challenge to the portion of his statement made voluntarily. The driver of offending vehicle did not appear in the witness box to counter testimony of Sukhwinder Singh AW4 much less to establish that Darshan Singh can be attributed negligence for the occurrence. In the given circumstances, I do not find any reason to differ with findings of the Tribunal on issue No. 1 and accordingly, the same are affirmed.

The insurance company failed to adduce sufficient evidence to prove that the insured is guilty of violating the terms and conditions of policy on the basis whereof the insurance company can press for right of recovery against the insured after payment of compensation to the claimants.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

**FAO No.2271 of 2015**

The claimants are in appeal seeking enhancement of compensation on account of death of Darshan Singh.

The Tribunal, awarded Rs.10,28,000/-, detailed hereunder:-

| | |
|---|---|
| Monthly income of the deceased | Rs. 10,000/- |
| Deduction for personal expenses | 1/3rd |
| Multiplier | 12 |
| Loss of dependency | Rs. 10,08,000/- |
| Funeral expenses | Rs. 20,000/- |

The application for compensation has been filed by the mother, four children of Darshan Singh and Sukhwinder Kaur, sister of said Darshan Singh. There is nothing on record suggestive of the fact that Sukhwinder Kaur sister of Darshan Singh had any independent source of income or she was not dependent upon earning of her brother. That being so, admissible deduction for personal and living expenses would be $1/4^{th}$. Claimants shall be entitle to addition in income for future prospects @ 25%. Admissible multiplier for computing loss of dependency would be 13 as the deceased was in the age bracket of 46-50 years. In this manner, loss of dependency is calculated at Rs. 14,62,500/- [10,000 x12 x13= 15,60,000+3,90,000 (25%)= 19,50,000 - 4,87,500($1/4^{th}$)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 30,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company**

**Limited and another AIR 2018 SC 5034,** detailed hereunder:-

| | |
|---|---|
| Expenses on funeral | Rs. 15,000/- |
| Loss of estate | Rs. 15,000/- |

Total compensation is Rs. 14,92,500/- and the additional amount is Rs. 4,64,500/- (14,92,500-10,28,000), payable with interest @ 7.5% per annum from the date of petition till realization, to Ritika, Kimran and Kartika minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. The interest accruing on the FDRs shall be paid to their grandmother for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

**FAO No. 2717 of 2015**

The Tribunal, awarded Rs.4,40,000/-, detailed hereunder:-

| | |
|---|---|
| Value of services of the deceased | Rs. 2500/- |
| Multiplier | 14 |
| Loss of dependency | Rs. 4,20,000/- |
| Funeral expenses | Rs. 20,000/- |

The occurrence in question took place in January 2012. The deceased left behind four children out of which three were minors at the time of accident. Unfortunately, her husband also died in the same accident and the children were rendered orphan. Taking a clue from minimum wage available at the relevant time coupled with that a house-maker has multifarious duties to perform and she is available to family round the clock, value of services of the deceased is assessed at Rs. 7500/- per month. The Tribunal has held that the deceased was 40 years old. Admissible multiplier would be 15. There would be no deduction for personal expenses in view of Division Bench judgment of this Court **Paramjit Singh and another vs. Dilbagh Singh alias Bagga and others 2014(4)R.C.R. (Civil)895.** In this manner, loss of dependency is calculated at Rs. 7500X12x15=13,50,000/-

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 15,000/- for funeral expenses.

Total compensation is Rs.13,65,000/- and the additional amount is Rs. 9,25,000/- ( 13,65,000- 4,40,000), payable with interest @ 7.5% per annum from the date of petition till realization, to minor children 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 interest accruing on the FDRs shall be paid to their grandmother for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

**(Rekha Mittal)**
**Judge**

**14.5.2019**
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No