IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

245 **Date of decision: 20.08.2019**

FAO-3312-2016 (O&M)

The New India Assurance Company Ltd. ... Appellant

Versus

Sukhjiwan Kaur and others ... Respondents

FAO-4017-2016 (O&M)

Sukhjiwan Kaur and another ... Appellants

Versus

Sarabjit Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Vandana Malhotra, Advocate for the insurance company.
Mr. Munish Gupta, Advocate for the claimants.
Ms. Ekta Thakur, Advocate for driver and owner.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3312 and 4017 of 2016 as these have emerged out of the same award dated 01.03.2016 passed by the Motor Accidents Claims Tribunal, Hoshiarpur whereby compensation has been assessed on account of death of Dinesh Singh in a motor vehicular accident that took place on 28.04.2015.

FAO No.3312 of 2016 has been filed by the New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to assail liability of the insurance company as well as quantum of compensation, if the insurance company is held liable to pay compensation.

The Tribunal awarded Rs.10,78,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6500/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	Rs.10,53,000/-
Expenses on funeral	Rs.25,000/-

Counsel for the insurance company would argue that as the offending vehicle was used for commercial purpose in violation of the terms and conditions of insurance policy, the insurer is entitle to be exonerated of liability to pay compensation. It is further argued that the policy in question is an Act Policy and insurance company has wrongly been fastened with liability to pay compensation.

With regard to quantum of compensation, it is argued that the Tribunal has wrongly allowed addition for future prospects @ 50% as against 40% admissible in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal holding the driver, owner and insurer of offending vehicle jointly and severally liable to pay compensation. He has prayed for allowing additional compensation on the premise that deceased was working as JCB operator at salary of Rs.10,000/- per month and accordingly monthly loss of dependency may be enhanced.

Though the insurance company raised a plea that tractor trolley was used for purpose other than that for which it was insured but the insurance company at no stage of proceedings before the Tribunal pressed for an issue in this regard meaning thereby that the insurance company has waived any such plea during the course of hearing. The insurance company cannot be allowed to raise a factual dispute for the first time in appeal.

So far as plea of the insurance company that the policy is an Act Policy, the deceased was a third party who was travelling on a motorcycle and hit by the tractor trolley driven by Sarabjit Singh @ Sabi respondent No.1 therein. The plea that tractor was attached with trolley and driver had a licence without an endorsement of transport vehicle is misconceived when examined in the light of judgments of Hon'ble the Supreme Court **Nagashetty Vs. United India Insurance Company Limited, 2001(4) RCR (Civil) 597** and **Mukund Dewangan Vs. Oriental Insurance Company Limited 2017 (7) Scale 731.**

This brings the Court to quantum of compensation assessed by the Tribunal. The plea of claimants is that deceased was working as JCB operator with Surinder Bansal at salary of Rs.10,000/- per month. Neither the claimants examined said Surinder Bansal nor produced any documentary evidence in respect of income of the deceased. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.7000/- per month. Addition in income for future prospects would be 40% in the light of judgment in **Pranay Sethi and others's case (supra)**. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.10,58,400/- [(7000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.10,88,400/- and additional amount is Rs.10,400/- (10,88,400 - 10,78,000), payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased, to be invested in fixed deposit for a period of two years.

In view of what has been discussed hereinbefore, the appeal filed by the claimants is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the insurance company is dismissed leaving the parties to bear their own costs.

20.08.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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