IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1 **FAO-3536-2016**

Date of Decision : November 21, 2019

SEEMA NEGI AND ORS

.....Appellants

VERSUS

SURAJ AND ORS

.....Respondents

2 **FAO-7778-2016(O&M)**

JAGGA RAM

.....Appellant

VERSUS

SEEMA NEGI AND ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Neeraj Khanna, Advocate
for the appellants in FAO-3536-2016.

Mr. Navin Kapur, Advocate
for the appellant in FAO-7778-2016 and
for respondent No.2 in FAO-3536-2016.

Mr. Satpal Dhamija, Advocate
for the respondent-Insurance Company.

NIRMALJIT KAUR, J. (Oral)

Both the above mentioned appeals shall stand decided by this common order.

FAO-3536-2016

This appeal is filed by the claimants praying for enhancement of the amount granted vide award dated 27.11.2015 passed by the the Motor Accident Claims Tribunal, Panchkula.

While praying for enhancement of the amount, learned counsel for the appellants-claimants submitted that the deceased, who was only 42 years of age, was earning Rs.10,000/- per month as Plumber in the hotel at Chandigarh whereas the Tribunal assessed the income as only Rs.6800/- per month by taking into account the deductions in the salary slip by ignoring the statement of PW3 Kuldeep Chand, Accounts Manager of the concerned hotel where the deceased was working, who proved that the deceased was getting a salary of Rs.7,423/- per month.

Learned counsel for the respondent-Insurance Company, however, while opposing the same submitted that as per the same witness, the carry home salary was Rs.6,800/- per month pertaining to the last month before the date of the accident.

This fact has not been disputed by the learned counsel for the appellants.

Accordingly, this Court finds no ground to enhance the amount already awarded by the Tribunal.

<u>CM-26180-CII-2016 IN</u>
<u>FAO-7778-2016</u>

For the reasons mentioned in the application, the application is allowed and the delay of 249 days in re-filing of the appeal is condoned.

<u>FAO-7778-2016</u>

This appeal has been filed by the owner for setting aside the award dated 27.11.2015. Firstly on the ground that the liability should have been fastened upon the Insurance Company whereas the owner and the driver alone have been made liable for the same on account of a driving licence which was stated to be fake and secondly on the question of quantum.

Qua the first ground, it is contended that the owner had duly come in the witness box as RW2 and stated that he saw the driving licence and had no reason to disbelieve the same. He had also checked out his driving abilities. Reliance was placed on the judgment rendered by the Hon'ble Apex Court in the case of **Pepsu Road Transport Corporation** **Vs**. **National Insurance Company**, *2013(4) R.C.R. (Civil) 273*.

While following the said judgment in the case of Jiwan Singh Vs. Lila Wanti and others decided on 3.9.2019 FAO-880 of 2018, this Court held that the person even with reasonable knowledge and education will not be able to find out the difference between the fake and a genuine driving licence. He is not expected to get the same verified from the Licensing Authority and in any case, the judgment rendered by Hon'ble Apex Court in the case of Pepsu Road Transport Corporation (supra) was a complete answer to the issue in hand. Para No.9 of the said judgment reads as under:-

> "9. On facts, in the instant case, the appellant employer had employed the third respondent Nirmal Singh as driver in 1994. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority

> before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position."

In the present case, the appellant-owner appeared as RW2 and although admitted that he did not get the driving licence verified but submitted that at the time of employment, he had duly seen the driving licence of the said driver which contained the photographs, sign of the driver as well as the signatures and seal of the issuing Officer and had also tested his driving abilities and found that he used to drive the vehicle very carefully and properly and had been earlier also driving the vehicles of other owners. Therefore, this Court has no reason to disbelieve the statement of the concerned owner as no person would entrust his vehicle in the hands of a stranger till he was satisfied that he knew how to drive and had a driving licence. Accordingly, this Court finds that the matter is squarely covered by the judgment rendered in case of Pepsu Road Transport Corporation (supra). Therefore, the award dated 27.11.2015 is set-aside to the extent vide which the finding has been recorded by the Tribunal against the owner and the liability has been imposed upon the appellant-owner and the driver. The compensation awarded by the Tribunal shall now, accordingly, be paid by the Insurance Company.

With respect to the second argument that the amount awarded is on the higher side, it was contended that the future prospects should have been granted @ 25% instead of @ 30% taking into account that the age of the deceased was 42 years and the deduction should have been 1/5th instead of 1/4th. Further, the amount granted under the conventional head is Rs.2,25,000/- whereas it should have been granted Rs.70,000/- as per the judgment rendered by the Hon'ble Apex Court in the case of **National Insurance Company Limited** **vs**. **Pranay Sethi and others,** *2017 AIR(SC) 5157*.

The argument that the future prospects should have been @ 25% and not @ 30% has no merit. Both the age as well as the employment of the deceased has to be taken into consideration. In the present case, it is not disputed that the deceased was a regular employee of the concerned hotel. Therefore, this Court finds no reason to reduce the future prospects from 30% to 25%.

Similarly, this Court does not find any reason to reduce the amount granted under the conventional heads. No doubt, in the judgment rendered by the Hon'ble Apex Court in the case of Pranay Sethi (supra), the amount awarded is Rs.70,000/- but at the same time in the judgment rendered in the case of **Magma General Insurance Co. Ltd.** **Vs**. **Nanu Ram @ Chuhru Ram & Ors**., *2018(4) R.C.R.(Civil) 333*, it has been granted Rs.40,000/- per claimant. In the present case, there are as many as five claimants. Even if the amount is reduced, the same would be negligible.

However, there is merit in the argument of learned counsel for the respondent-Insurance Company that the deduction should have been 1/4th instead of 1/5th in view of the judgment rendered in the case of Pranay Sethi (supra) wherein it is specifically laid down that in case there are four to six claimants, then the deduction should be 1/4th. Accordingly, the award is modified only to the extent of deduction which should be 1/4th instead of 1/5th and as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	Rs.6800/- p.m.
2	Future prospects @ 30%	Rs.6800 @ 30% = 2040 6800 + 2040 = 8840
3	Dependency 1/4th	8840 @ 1/4th = 2210 8840-2210 = 6630
4	Multiplier	6630 x 12 x 14 = Rs.11,13,840
5	Conventional Heads	Rs.2,25,000/-
6	Total	Rs.13,38,840/-
7	Compensation awarded by the Tribunal	Rs.14,13,096/-

Accordingly, the present appeal i.e. FAO-7778-2016 filed by the appellant-owner is allowed to the said extent. The amount of Rs.74,256/- be deposited within two months from the receipt of certified copy of this order alongwith interest @ 6% per annum from the date of the claim petition till its realization.

However, in case the same is not deposited within two months, the same shall thereafter be deposited alongwith interest @ 12% till payment after the expiry of two months.

Both the appeals shall stand disposed of in above terms.

November 21, 2019 **(NIRMALJIT KAUR)**
ajay-1 **JUDGE**

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No