IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.08.2019

FAO No.395 of 2016 (O&M)

Sushma Rani and another ... Appellants

Versus

Raj Kumar and others ... Respondents

FAO No.1026 of 2016 (O&M)

The Oriental Insurance Co. Ltd. ... Appellant

Versus

Sushma Rani and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. BS Mamli, Advocate
for the claimants.

Mr. DP Gupta, Advocate
for the insurance company.

Mr. Darshan Gulati, Advocate
for the driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.395 and 1026 of 2016 as these have emerged out of the same award dated 05.11.2015 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri, whereby compensation has been assessed on account of death of Gopal Singh in a motor vehicular accident that took place on 04.08.2013.

FAO No.395 of 2016 has been filed by claimants Sushma Rani and another seeking enhancement of compensation whereas the other appeal has been filed by Oriental Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') to assail the award.

Counsel for the insurance company would inform that the appeal has been filed primarily to assail quantum of compensation and effectiveness of driving licence possessed by driver at the relevant time.

The Tribunal awarded Rs.20,84,000/- detailed hereunder:-

Annual income of the deceased	Rs.2,40,000/-
Deduction for personal expenses	1/3rd
Addition in income for future prospects	15%
Multiplier	11
Loss of dependency	Rs.20,24,000/-
Funeral expenses	Rs.25000/-
Loss of love and affection	Rs.25000/-
Loss of consortium	Rs.10,000/-

Counsel for the claimants would argue that income of the deceased assessed by the Tribunal is on lower side and needs enhancement in the light of testimony of Deepak Chopra-PW3. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, would argue that addition in income for future prospects should be 10% in place of 15%. With regard to driving licence, it is argued that as tractor was attached with trolley, the vehicle became a transport vehicle but driver did not possess licence authorizing him to drive a transport vehicle.

Indisputably, the deceased was an employee of Saraswati

Sugar Mills, Yamuna Nagar. Deepak Chopra, Time Keeper, Saraswati Sugar Mills, Yamuna Nagar-PW3 was examined to prove employment and income of the deceased. He produced on record documents Exs.P4 to P6, Form 16 for the period 01.04.2012 to 31.03.2013 is Ex.P-5 and gross salary of the deceased has been recorded to be tune of Rs.2,47,027.88. The Tribunal has assessed income of the deceased at Rs.2,40,000/- per annum while excluding benefit of Rs.400/- per month towards washing allowance and Rs.200/- as conveyance allowance. However, the Tribunal has not recorded any reason for assessing income @ Rs.2,40,000/- . Even if benefit of washing allowance is not extended, annual income of the deceased would be Rs.2,46,628/- (2,47,028 – 400).

The Tribunal has extended benefit of addition in income for future prospects @ 15% as the deceased was more than 50 years of age at the relevant time. The deceased joined the Saraswati Sugar Mills, Yamuna Nagar on 23.12.1987 and was due for retirement on 09.03.2022 and as such, he was a regular employee of the aforesaid mill. The Tribunal has rightly extended benefit of future prospects @ 15%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.20,79,896/- [(2,46,628 x 11) + (15% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.21,49,896/- and the additional amount is Rs.65,896/- (21,49,896 – 20,84,000), payable with interest @ 7.5% per annum from the date of petition till realization.

Coming to the driving licence, the driver had a licence to drive light motor vehicle. There is nothing on record suggestive of the fact that gross vehicle weight of tractor or tractor attached with trolley was more than 7500 kilograms, therefore, it would fall within the purview of light motor vehicle under Section 2(21) of the Motor Vehicles Act, 1988. When the case is examined in the light of the judgments of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731** and **Nagashetty Vs. United India Insurance Company Limited, 2001(4) RCR (Civil) 597,** I do not find any reason to differ with findings of the Tribunal on the issue of driving licence.

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

19.08.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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