IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 02.09.2019

FAO No.5301 of 2015 (O&M)

ICICI Lombard General Insurance Company Ltd. ... Appellant

Versus

Mandeep Kaur and others ... Respondents

FAO No.5885 of 2015 (O&M)

Mandeep Kaur and others ... Appellants

Versus

Kuldeep Chand and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate
for the insurance company.

Mr. Ashok Giri, Advocate
for the claimants.

Mr. Gaurav Gaur, Advocate
for owner (respondent No.5).

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5301 and 5885 of 2015 as these have emerged out of the same award dated 05.05.2015 passed by the Motor Accidents Claims Tribunal, Rupnagar whereby compensation has been assessed on account of death of Kuljeet Singh in a motor vehicular accident that took place on 19.06.2014.

FAO No.5301 of 2015 has been filed by ICICI Lombard

General Insurance Company Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been filed by claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and findings of the Tribunal on issue No.3 as the vehicle was plied without a valid permit.

FAO No.5301 of 2015

The plea of insurance company with regard to quantum of compensation would be considered by the Court while deciding the appeal preferred by claimants seeking enhancement of compensation.

To assail findings of the Tribunal on issue No.3, it is argued that permit of the offending vehicle i.e. truck No.HP-34-3338 expired before the date of accident on 19.06.2014, therefore, the insured is guilty of violating the terms and conditions of policy constituting a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). It is further argued that as the vehicle was being plied at a public place without permit in compliance with the provisions of Section 66 of the Act, the insurance company may be exonerated of liability to pay compensation or given right of recovery against the insured after payment of compensation to the claimants.

Counsel for respondent No.5 (owner of the offending vehicle) would argue that respondent No.5 has filed an application (CM No.26910-CII of 2018) under Order 41 Rule 27 read with Section 151 CPC for permission to lead additional evidence i.e. to place on record the document Annexure A1 (colly). It is argued that since tax was paid to the Government of Himachal Pradesh vide receipt dated 23.06.2014, the insured cannot be held guilty of breaching the terms and conditions of policy nor the insurance company can escape its liability to pay compensation by way of indemnification of the insured.

Reply to the application for additional evidence filed by counsel for the insurance company is taken on record. Counsel would submit that since the earlier permit obtained by the insured had already expired prior to the date of occurrence, payment of certain taxes vide receipt sought to be produced by way of additional evidence would not enure to benefit of the insured to escape his liability to comply with the terms and conditions of policy, in respect of a valid permit.

Counsel for respondent No.5, in response to a query, would fairly inform that permit earlier obtained by the insured for plying the offending vehicle had expired before the date of accident. Since the vehicle did not have a permit on the date of occurrence, the mere fact that some payment was made vide receipt dated 23.06.2014 would not enure to benefit of the insured to contest claim of the insurance company that vehicle was being plied without a permit amounting to violation of terms and conditions of policy constituting a defence in favour of the insurer. In this view of the matter, findings recorded by the Tribunal on issue No.3 are modified to the effect that offending vehicle was being plied without a valid permit on the date of accident, therefore, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

For the foregoing reasons, appeal filed by the insurance company is partly allowed in the aforesaid terms. Since the documents sought to be produced by way of additional evidence have been taken into consideration, the application stands disposed of.

FAO No.5885 of 2015

The Tribunal awarded Rs.22,99,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.15,000/-
Addition in income for future prospects	30%
Multiplier	14
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.21,84,000/-
Expenses on funeral	Rs.10,000/-
Loss of consortium	Rs.1,00,000/-
Expenses on transportation	Rs.5000/-

Counsel for the claimants would argue that though the Tribunal by taking into consideration the documents Exs.P-2/A and PW-2/B had held that approximately monthly income comes to Rs.17,561/- but the Tribunal has assessed it at Rs.15,000/- per month. Claimants may be allowed addition in income for future prospects. In this context, reference has been made to judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel for the insurance company, on the contrary, would argue that testimony of Charanjit Singh PW2 does not portray clear picture with regard to deceased Kuljeet Singh being member of the Milk Cooperative Society or sale of milk by said Kuljeet Singh as reflected in the documents produced by Charanjit Singh PW2.

Counsel for the claimants, in response to order dated 25.09.2018 passed by this Court, would inform that as per instructions, the Society does not issue identity card to its members.

Perusal of documentary evidence produced by Charanjit Singh PW2 certainly indicates that deceased Kuljeet Singh was supplying milk to the Cooperative Society. However, Charanjit Singh PW2 in his cross examination had stated that after death of Kuljeet Singh, his family is supplying milk and payment was made to members of his family in respect of those supplies. In the given circumstances, claimants shall be entitle to loss of services/managing skills of the deceased. Taking a clue from notification issued by the State of Punjab fixing minimum wage coupled with evidence on record, income of the deceased is assessed at Rs.10,000/- per month. Claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.14,00,000/- [(10,000 x 12 x 14) + (25% 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.14,70,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.8,29,000/- (22,99,000 - 14,70,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

02.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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