IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 29.5.2019

1. **FAO No. 4431 of 2016(O&M)**

Ram Diya and others …..Appellants

VERSUS

Sanjay Singh and another .....Respondents

Present: Mr. Sandeep Goyal, Advocate for the appellants.

Mr. Rajesh K. Sharma, Advocate for the insurance company.

*****

2. **FAO No. 6012 of 2017(O&M)**

Sanjay Singh …..Appellant

VERSUS

UIIC and others .....Respondents

Present: None for the appellant.

Mr. Rajesh K. Sharma, Advocate for the insurance company.

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

*****

REKHA MITTAL, J. (Oral)

CM No.15266-CII of 2016

Prayer in this application is for condoning delay of 45 days in filing the appeal.

Heard.

DIWAKER GULATI
2019.06.19 17:12
I attest to the accuracy and
authenticity of this document
Chandigarh

In view of averments made in the application supported by an affidavit of Ram Diya, appellant No.1, the application is allowed. Delay of 45 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO Nos.4431 of 2016 and 6012 of 2017

This order will dispose of FAO Nos.4431 of 2016 and 6012 of 2017 as these have emerged out of the same award dated 03.11.2015 passed by the Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal') whereby compensation has been awarded on account of death of Savita Rani in a motor vehicular accident that took place on 06.10.2014 and the insurance company has been given right of recovery after payment of compensation to the claimants.

FAO No.6012 of 2017 has been filed by the insured (driver/owner of offending vehicle) to challenge recovery right whereas other appeal has been preferred by the claimants seeking enhancement of compensation.

FAO No.4431 of 2016

The Tribunal awarded Rs.11,05,000/- detailed hereunder:-

Monthly value of services of the deceased	Rs.5000/-
Multiplier	16
Loss of dependency	Rs.9,60,000/-
Expenses on last rites and transportation of Dead body	Rs.20,000/-
Loss of love and affection	Rs.50,000/-
Loss of consortium	Rs.75,000/-

The deceased left behind family consisting of her husband, two minor daughters and one minor son. A house maker has multifarious

DIWAKER GULATI
2019.06.19 17:12
I attest to the accuracy and
authenticity of this document
Chandigarh

duties to perform. She cannot be equated with a daily wager. She is available round the clock for discharging her onerous obligation towards her husband and children besides meeting social obligations and providing mental comfort etc. to her family. In this view of the matter, value of services of deceased is assessed at Rs.9000/- per month. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency comes to Rs.17,28,000/- (Rs.9000/- x 12 x 16).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.55,000/- i.e. Rs.40,000/- for loss of consortium to the husband and Rs.15000/- for expenses on funeral.

In view of the above, total compensation comes to Rs.17,83,000/- and the additional amount is Rs.6,78,000/- (Rs.17,83,000/- - Rs.11,05,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be paid to 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 appeal is partly allowed in the aforesaid terms.

FAO No.6012 of 2017

The owner-cum-driver of offending vehicle has challenged recovery right given in favour of the insurance company on the premise that driver of offending vehicle Verna Car bearing No.HR-995-ATP-0306 had a learner's licence and he did not have a duly licensed person sitting by his side and as such there is violation of Rule 3 of the Central Motor Vehicles Rules, 1989.

DIWAKER GULATI
2019.06.19 17:12
I attest to the accuracy and
authenticity of this document
Chandigarh

The controversy raised in the present appeal is squarely covered in favour of the appellant by judgment of this Court **Virender Singh and another Vs. M/s IFFCO Tokio General Insurance Co. Ltd. and another, 2017 ACJ 374.** A relevant extract from para 4 of the judgment reads thus:-

> Learned counsel appearing for the appellant make reference of the judgment of the Karnataka High Court which I do not feel constrained to cite when there is a binding precedent of the Supreme Court. There is no scope for reopening an issue and invoke High Court's wisdom in that regard. The counsel for the insurer makes reference to the judgment in **Bhuwan Singh Vs. Oriental Insurance Co. and another 2009 ACJ 1426**. This was a case relating to an expiry of learner licence and a renewal applied after the accident. The Court was holding an application for renewal within 30 days which is a period available for regular licence given under Section 15 will not apply to learners licence. Bhuwan Singh's case (supra) actually considered the case of an expiry of learner's licence after the date of the accident to examine whether the grace period of 30 days will also be applicable to learner's licence. It held that Section 15 was applicable only to regular licence and not to learner licence. The judgment in Bhuwan Singh's case (Supra) has, therefore, no applicability to the point brought before me. There are also no particular clauses in the policy of insurance issued to the insured excepting liability, if the person driving on a learner's licence was

DIWAKER GULATI
2019.06.19 17:12
I attest to the accuracy and
authenticity of this document
Chandigarh

without instructor by his side. The counsel states that no such clause is even necessary because it statutorily covers a situation of what the contract of insurance through the policy did not cover. In my view, Rule 3 requires a person to be accompanied by an instructor and if it is breached, it may have other consequences if the rules provided for the same, but, they will have nothing to do with exonerating the liability of insurance unless the contractual terms of insurance policy provided for exclusion. Form 3 in the Central Motor Vehicle Rules, 1989 itself contains no more than a warning drawing attention to Rule 3. This is so because the lines of defences for the insurer cannot traverse beyond the boundaries set under Section 149 of the Motor Vehicles Act. The said provisions only allows for a condition that could exclude the driving by a person who has not duly licenced. A person who held learners licence must be taken as "duly licenced" as interpreted by the Supreme Court in Swaran Singh's case (supra) and confirmed in subsequent rulings of the Supreme Court which I have cited above. There is no scope for importing requirement of instructor's presence for adjudging the entitlement of the insured to secure indemnity."

In view of the above, findings recorded by the Tribunal with regard to the insured being guilty of breaching terms and conditions of policy constituting a defence in favour of the insurer on the basis whereof recovery right has been given to the insurance company cannot be allowed to sustain and accordingly set aside. As a natural corollary, the insurance

DIWAKER GULATI
2019.06.19 17:12
I attest to the accuracy and
authenticity of this document
Chandigarh

company shall be jointly and severally liable to pay compensation to the claimants, without any right of recovery.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

MAY 29, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no

DIWAKER GULATI
2019.06.19 17:12
I attest to the accuracy and
authenticity of this document
Chandigarh