IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 27.05.2019

FAO No.4709 of 2016 (O&M)

Rajwinder Kaur and others ... Appellants

Versus

Mandeep Singh @ Sodhi and another ... Respondents

FAO No.6854 of 2018 (O&M)

Mandeep Singh @ Sodhi ... Appellant

Versus

Rajwinder Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gursimran S. Bhatia, Advocate
for the claimants.

Mr. Varun Sharma, Advocate
for the driver and owner.

Mr. Punit Jain, Advocate
for the insurance company.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4709 of 2016 and 6854 of 2018 as these have emerged out of the same award dated 15.05.2014 passed by the Motor Accidents Claims Tribunal, Shaheed Bhagat Singh Nagar whereby compensation has been assessed on account of death of Manbir Singh in a motor vehicular accident that took place on 25.01.2013.

FAO No.4709 of 2016 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been filed by owner-cum-driver of offending vehicle to express his grievance against recovery right given in favour of the insurance company.

CM No.16033-CII of 2016 in FAO No.4709 of 2016

Prayer in this application is for condonation of delay of 636 days in filing the appeal.

In view of averments made in the application supported by an affidavit of appellant No.1-Rajwinder Kaur coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 636 days in filing the appeal is condoned subject to the condition that the claimants shall forgo interest for the period of delay, in case compensation is enhanced.

FAO No.4709 of 2016

The Tribunal awarded Rs.28.57/- lakhs (rounded off to Rs.28.6/- lakhs), detailed hereunder:-

1. Monthly income of the deceased	Rs.25,000/-
2. Addition in income for future prospects	50%
3. Multiplier	13
4. Deduction for personal expenses	50%
5. Loss of dependency	Rs.28,47,000/-
6. Expenses on funeral	Rs.10,000/-

The Tribunal, in para 15 of the award, has noticed that ASI Amarjit Singh AW1 has proved salary certificate Ex.PA reflecting gross salary at Rs.29,306/- and carry home salary Rs.26,883/- after deducting CPF and GIS to the extent of Rs.2393/- and Rs.30/-, respectively. The Tribunal has not assigned any reason to deny benefit of CPF and GIS for computing loss of dependency and assessing monthly income at Rs.25,000/- despite noticing that carry home salary was Rs.26,883/-. Since benefits of two deductions reflected in the salary certificate would be available to family of the deceased, the same cannot be taken out of consideration for computing loss of dependency. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359** and **Manasvi Jain VS. Delhi Transport Corporation, 2014(3) RCR (Civil) 313**. As such, gross salary of the deceased would be taken into account for computing loss of dependency and the annual income comes to Rs.3,51,672/-. After deducting income tax of Rs.15,622/-, net annual income of the deceased comes to Rs.3,36,050/-. Addition in income for future prospects allowed by the Tribunal is correct and affirmed.

The deceased was born on 21.04.1991 and he was 22 years old at the time of death. Admissible multiplier in the given circumstances would be 18. In this context, reference can be made to judgments of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**, **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315, National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **M/s Royal Sundaram Alliance Insurance Co. Ltd. Vs. Mandala Yadagari Goud and ors, CA No.6600 of 2015, decided on 09.04.2019.**

The application for compensation has been filed by the parents and grandfather of the deceased. In the given circumstances, admissible deduction for personal expenses would be 50%. In this manner, loss of dependency is calculated at Rs.45,36,675/- [(3,36,050 x 18) + (50% 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.45,66,675/- and the additional amount is Rs.17,06,675/- (45,66,675 – 28,60,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 636 days in filing the appeal, to mother of the deceased, to be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

FAO No.6854 of 2018

The sole grievance of the appellant is that the insurance company has wrongly been given right of recovery, in view of findings recorded in para 23 of the award. It is argued that though the appellant has filed an application for additional evidence but even if the vehicle did not have a route permit or fitness certificate, non-possessing thereof is not a defence available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act') and as such, recovery right given in favour of the insurance company cannot be allowed to sustain.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal.

As per the settled position in law, non-possessing of route permit or deviation therefrom is not a plea in defence available to the insurance company. The vehicle was registered in the State of Punjab and occurrence in question also took place in State of Punjab. In this view of the matter, findings of the Tribunal giving right of recovery in favour of the insurance company is the result of non-application of mind and failure to apply the provisions of Section 149(2) of the Act correctly. Accordingly, findings of the Tribunal recorded in paras 23 and 24 of the award cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is partly allowed. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

27.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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