IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225 FAO-60-2015 (O&M)

Date of decision: 24.05.2019

UNITED INDIA INSURANCE CO. LTD ... Appellant

Versus

BALESH KUMAR & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. DP Gupta, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

CM No.255-CII of 2015

Heard.

Allowed as prayed for. Delay of 7 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 28.08.2014 passed by the Motor Accidents Claims Tribunal, Patiala whereby compensation has been assessed on account of death of Jonney in a motor vehicular accident that took place on 20.01.2013.

Counsel for the insurance company would inform that the appeal has been preferred to challenge quantum of compensation and findings on issue No.4 pertaining to driving licence.

With regard to compensation assessed by the Tribunal, it is argued that the Tribunal has allowed addition in future prospects @ 50% as against 40% admissible in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

Counsel would argue that the offending vehicle is Swaraj Mazda and driver of the vehicle namely Gagan Devedi was authorised to drive light motor vehicle and as such, the insured is guilty of violating the terms and conditions of policy entitling the insurance company to press for right of recovery against the insured after payment of compensation to the claimants.

The Tribunal has assessed income of the deceased at Rs.4000/- per month. The plea of the claimants is that deceased was rickshaw puller thereby earning Rs.15,000/- per month. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6000/- per month. Addition in income for future prospects would be 40%, as has been rightly submitted by counsel for the appellant. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.9,07,200/- [(6000 x 12 x 18) + (40% 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.9,37,200/- and the additional amount is Rs.2,79,200/- (9,37,200 – 6,58,000) payable with interest @ 7.5% per annum from the date of petition till realization.

The contention of the insurance company with regard to driver being not competent to drive the offending vehicle on the basis of licence possessed by him authorising him to drive light motor vehicle is not tenable as gross vehicle weight of Swaraj Mazda is 6140 kgs. and the same falls within the definition of Light Motor Vehicle under Section 2(21) of the Motor Vehicles Act, 1988, when examined in the light of latest judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731.**

In view of what has been discussed hereinbefore, the appeal stands disposed of. A copy of the judgment be sent to the claimants in order to entitle them to recover additional amount.

24.05.2019 **(REKHA MITTAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No