IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 22.05.2019

FAO No.537 of 2016 (O&M)

Parmila and others ... Appellants

Versus

Balwant Singh and others ... Respondents

FAO No.752 of 2016 (O&M)

Suman and others ... Appellants

Versus

Balwant Singh and others ... Respondents

FAO No.1083 of 2016 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Parmila and others ... Respondents

FAO No.1084 of 2016 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Suman and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RC Kapoor, Advocate
for the insurance company.

Mr. Narender Kaajla, Advocate
for the claimants.

Mr. Ajay Aggarwal, Advocate for
Mr. Sandeep Goyat, Advocate
for the driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.537, 752, 1083 and 1084 of 2016 as these have emerged out of the same award passed by the Motor Accidents Claims Tribunal, Hisar whereby compensation has been assessed on account of death of Harpal Singh and Ravi Kumar in a motor vehicular accident that took place on 03.04.2014.

FAO No.537 of 2016 has been filed by the claimants seeking enhancement of compensation qua death of Harpal Singh, FAO No.752 of 2016 by the claimants qua death of Ravi Kumar whereas the other two appeals have been preferred by the New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company').

Counsel for the insurance company would inform that the appeals have been preferred to assail findings of the Tribunal on issue No.1, quantum of compensation and driving licence possessed by Balwant Singh, driver of bus bearing No.HR-62-A-0449.

FAO Nos.1083 and 1084 of 2016

So far as question of quantum of compensation is concerned, the same would be considered while disposing of the appeals preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would argue that as per allegations raised by the claimants, offending bus overtook the tractor and motorcycle driven by Ravi Kumar and suddenly applied brakes and the motorcycle struck behind the offending vehicle. It is argued that in the first version narrated by Naresh Kumar alleged eye-witness to the occurrence and brother of deceased Harpal Singh, he had stated that both the deceased came in between the bus going ahead and tractor coming from behind. It is argued that in the site plan prepared during investigation of the criminal case, it has been depicted that the bus was at a distance from the place where the deceased were lying. It is argued with vehemence that as a matter of fact, the accident took place due to hitting by tractor and as such, negligence in causing the occurrence cannot be attributed to the offending vehicle nor the claimants are entitle to compensation from the driver, owner and insurer of alleged offending bus.

Counsel has also challenged findings of the Tribunal recorded in para 46 of the award with regard to driving licence possessed by Balwant Singh. It is argued that in view of testimony of Subhash Chand, Clerk from the Office of Licensing Authority, Meerut, driving licence bearing No.60024/78 AC was not issued in the name of Balwant Singh by their office, therefore, renewal of said licence by Licensing Authority, Fatehabad would not cure inherent defect in the original licence.

Counsel representing the respondents have supported findings of the Tribunal on issue No.1 and so also on the question of driving licence.

Naresh Kumar, an eye-witness to the occurrence and author of the FIR was examined as PW4. He tendered into evidence his duly sworn affidavit Ex.PW4/A and reiterated version of the claimants that accident took place due to rashness and negligence of offending bus as driver of the bus suddenly applied brakes after overtaking the tractor that was behind the motorcycle driven by Ravi Kumar as well as the motorcycle of said Ravi

Kumar and Ravi Kumar could not avoid collision with the bus despite his best efforts. The witness was cross examined at length but counsel for the insurance company has failed to point out any materials elicited in his cross examination to substantiate plea of the insurance company that there was no collision between the bus and motorcycle or the motorcyclist were only hit by the tractor coming from behind. The driver of the bus did not appear in the witness box to explain the circumstances under which the occurrence took place or counter testimony of Naresh Kumar attributing negligence to driver of the bus who suddenly applied brakes after overtaking the ill-fated motorcycle driven by Ravi Kumar. The site plan, if any, prepared by the police during investigation is not a part of records. This apart, the site plan is prepared by the police on the basis of factual situation after the occurrence. The possibility of offending vehicle having gone ahead after motorcycle having struck from behind cannot be ruled out. Analyzed from any angle, I do not find any reason to differ with findings of the Tribunal qua issue No.1 and the same are affirmed.

This brings the Court to question of validity of driving licence possessed by Sh. Balwant Singh. As per report Ex.R8, licence renewed in the name of Sh. Balwant Singh was originally issued by Licensing Authority, Meerut bearing No.60024/78 dated 05.02.1978. The insurance company examined Subhash Chand a Clerk of RTA, Meerut in respect of driving licence No.60024/78AC. No material has been placed on record to clarify that the alphabets 'AC' suffixed against driving licence No.60024/78 has no significance much less the same refer to licence No.60024/78 dated

05.02.1978, reference whereof has been made in the report Ex.R8 though the said report has not been proved in accordance with law after examining a witness along with relevant record from Licensing Authority, Fatehabad. This apart, as per report Ex.R8, the original licence was issued by Licensing Authority, Meerut but the insurance company examined a witness of the Regional Transport Authority, Meerut. No such fact has been elicited in the statement of Subhash Chand that there was no licensing authority in Meerut in the year 1978 except the office of RTA, Meerut. In the given circumstances, the insurance company cannot derive any advantage to its contention from testimony of Subhash Chand to successfully contend that original driving licence of Balwant Singh was not valid. In this view of the matter, the insurance company cannot be heard to say that insured is guilty of violating the terms and conditions of insurance policy constituting a defence in favour of the insurer.

The appeals are disposed of in the aforesaid terms.

FAO No.537 of 2016

With regard to death of Harpal Singh, the Tribunal awarded Rs.17,62,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.7000/-
2. Addition in income for future prospects	50%
3. Multiplier	16
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.15,12,000/-
6. Transportation and funeral expenses	Rs.25,000/-
7. Loss of consortium	Rs.1,00,000/-
8. Loss of love and affection to claimants No.2 to 4	Rs.1,00,000/-
9. Cost of litigation	Rs.25,000/-

The Tribunal has assessed income of the deceased at Rs.7000/- per month and the same is affirmed. However, addition in income for future prospects would be 40%. The multiplier applied by the Tribunal is correct and affirmed.

The Tribunal has applied deduction for personal expenses to the tune of 1/4th. The application for compensation has been filed by the widow, minor son and parents of the deceased aged 55 and 57 years. There is nothing on record suggestive of the fact that father of the deceased had any disability to render him dependent upon his married son at the age of 57 years. In the given circumstances, admissible deduction for personal expenses would be 1/3rd. In this manner, loss of dependency is calculated at Rs.12,54,400/- [(7000 x 12 x 16) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal to the tune of Rs.2,25,000/- is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

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

Counsel for the claimants has prayed for grant of conventional heads in the light of judgment of Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333**. However, keeping in view judgment passed by the Constitution Bench in **Pranay Sethi and others's case (supra)** and judgment of three Judge Bench in **Sebastiani Lakra and others's case (supra)** rendered after **Magma General Insurance Co. Ltd.'s case (supra)**, contention of the claimants for allowing more than Rs.70,000/- under conventional heads is not tenable.

The amount of Rs.25,000/- with regard to litigation costs allowed by the Tribunal is affirmed. In this manner, total compensation is Rs.13,49,400/- and compensation allowed by the Tribunal is reduced to the extent of Rs.4,12,600/- (17,62,000 - 13,49,400). 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.

FAO No.752 of 2016

The Tribunal has awarded Rs.19,51,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.7000/-
2. Addition in income for future prospects	50%
3. Multiplier	18
4. Deduction for personal expenses	$1/4^{th}$
5. Loss of dependency	Rs.17,01,000/-
6. Transportation and funeral expenses	Rs.25,000/-
7. Loss of consortium	Rs.1,00,000/-
8. Loss of love and affection to claimants No.2 to 4	Rs.1,00,000/-
9. Cost of litigation	Rs.25,000/-

In view of findings recorded in FAO No.537 of 2016, total compensation is Rs.15,06,200/- and compensation allowed by the Tribunal is reduced to the extent of Rs.4,44,800/- (19,51,000 – 15,06,200). 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.

22.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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