IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 04.10.2019

1. FAO 5397 of 2016 (O&M)

ICICI Lombard General Insurance Company Limited ....Appellant

Versus

Karam Singh and others ....Respondents

2. FAO 5400 of 2016 (O&M)

ICICI Lombard General Insurance Company Limited ....Appellant

Versus

Karam Singh and others ....Respondents

3. FAO 5401 of 2016 (O&M)

ICICI Lombard General Insurance Company Limited ....Appellant

Versus

Karam Singh and others ....Respondents

4. FAO 5078 of 2016 (O&M)

Karam Singh and another ....Appellants

Versus

Rajwant Singh and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Vandana Malhotra, Advocate and
Ms Monica Jangra, Advocate
for the insurance company

Mr. Shakti Mehta, Advocate
for the appellants/claimants (FAO No. 5078 of 2016)

None for respondents No. 3 and 4
(FAO 5397, 5400 and 5401 of 2016)

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Rekha Mittal, J. (Oral)

CM 18672 CII of 2016 in FAO No. 5397 of 2016

Prayer in this application is for condoning delay of 20 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 20 days in filing the appeal stands condoned.

Main case

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 06.04.2016 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short, 'the Tribunal') on account of death of Ritu Singh, Sandeep Singh and Jasveer Kaur in a motor vehicular accident that took place on 02.07.2014.

FAO Nos. 5397, 5400 and 5401 of 2016 have been filed by the ICICI Lombard General Insurance Company Limited (hereinafter referred to 'the insurance company') whereas FAO No. 5078 of 2016 has been filed by claimants seeking enhancement of compensation in regard to death of Ritu Singh.

Counsel for the insurance company would inform that appeals have been filed to assail findings of the Tribunal on the question of driving licence as well as quantum of compensation with regard to death of Ritu Singh and Sandeep Singh.

FAO Nos. 5397, 5400 and 5401 of 2016

Counsel for the appellant would argue that licence possessed by

Rajwant Singh, driver-cum-owner of Mahindra Utility Jeep bearing No. HP-62A-1814 (offending vehicle) was purportedly issued by the authority at Nagaland. It is argued that the insurance company filed an application for issuance of directions to RLA, Nagaland for sending verification report of driving licence No. 26637/TV/T/2010. The Tribunal passed orders dated 14.05.2015 and 07.07.2015 (Annexures A-4 and A-5), appended with paper book of FAO No. 5397 of 2016. It is further submitted that no such report was received from the concerned Licensing Authority despite orders passed by the Tribunal and, as such, a serious prejudice has been caused to the insurance company to establish its plea that licence possessed by the person was not valid and effective, thus, the insured is guilty of breaching terms and conditions of the policy constituting defence in favour of the insurance company.

With regard to challenge qua quantum of compensation, contention of the insurance company with regard to compensation awarded qua death of Ritu Singh would be considered in FAO No. 5078 of 2016.

Qua death of Sandeep Singh, grand son of claimants Karam Singh and Mohinder Kaur, the Tribunal awarded Rs.26,42,116/-, detailed hereunder:-

-Monthly income of the deceased	Rs.17,105/-
-Addition in income for future prospects	50%
-Deduction for personal expenses	50%
-Multiplier	17
-Loss of dependency	Rs.26,17,116/-
-Funeral expenses	Rs.25,000/-

Counsel would argue that as the claimants are grand parents of the deceased, they are not entitle to loss of dependency. In the alternative, it is argued that if claim is allowed, income tax may be deducted and addition in income for future prospects be restricted to 40%, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***.

There is no representation on behalf of respondents No. 3 and 4 in FAO 5397, 5400 and 5401 of 2016.

The claimants are grand parents of Sandeep Singh. Karam Singh, grand father of deceased is stated to be 70 years old. Counsel for the insurance company has failed to point out any material on record to conclude that claimants are not dependent upon income of their grand children. That being so, contention of the insurance company that claimants are not entitle to loss of dependency is not tenable.

Sandeep Singh was working as Manager in ICICI Bank Limited at Gurgaon after completion of MBA. Amit Pahwa (PW4), a witness from ICICI Bank Limited was examined to prove that Sandeep Singh joined as Officer at salary of Rs.17,105/- per month. He proved salary slips for the months of December 2013 and January 2014, Ex.PW4/B and PW4/C, respectively. Taking into consideration salary of the deceased, the Tribunal has rightly assessed his income at Rs.17,105/- per month. As salary was not taxable, the gross salary would be taken into consideration for assessing loss of dependency. The claimants shall be entitle to addition in income for future prospects at the rate of 40% as there is no evidence that deceased was a regular employee of ICICI Bank Limited. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. As such, loss of dependency comes to Rs.24,42,594/- [Rs.34,89,420/- i.e. 17,105 x 12 x 17 + Rs.13,95,768/- (40% addition) – Rs.24,42,594/- (50%

deduction)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000.00 (Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court in ***Pranay Sethi's*** case (supra) and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

In view of the above, total compensation is Rs.24,72,594/- and compensation assessed by the Tribunal is reduced to the extent of Rs. 1,69,522/- (26,42,116 - 24,72,594). The insurance company shall be entitle to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

So far as plea of insurance company with regard to driving licence of Rajwant Singh, counsel has not referred to the orders passed subsequent to 28.07.2015, the date for which, the case was adjourned from 07.07.2015 when admittedly the award was passed on 06.04.2016. Perusal of the award particularly findings recorded in para 45 would reveal that the same does not make reference to orders passed by the Tribunal, referred to by counsel for the insurance company. With regard to report received under the Right to Information Act, 2005, the Tribunal has held that there is no evidence as to the mode by which the report was received nor there is any evidence to prove that the report was made by the Licensing Authority after verifying the records.

Indisputably, the insurance company did not examine an official from the concerned Licensing Authority along with relevant records to discharge onus of issue No. 3 that licence possessed by driver was not valid or he was not duly licensed to drive the vehicle in question. That being so, I do not find any reason to interfere in findings of the Tribunal on issue No. 3.

In view of what has been discussed hereinabove, the appeals stand disposed of in the aforesaid terms.

FAO No. 5078 of 2016

The Tribunal awarded Rs.16,45,000/-, detailed hereunder:-

-Monthly income of the deceased	Rs.10,000/-
-Addition in income for future prospects	50%
-Deduction for personal expenses	50%
-Multiplier	18
-Loss of dependency	Rs.16,20,000/-
-Funeral expenses	Rs.25,000/-

Contention of the insurance company with regard to claimants being not dependent upon the deceased is not tenable, in view of the discussion made while deciding their entitlement to get compensation qua death of Sandeep Singh. The deceased was a student of M.Sc. (Agriculture) with YS Parmar University Solan. The Tribunal assessed income of the deceased at Rs.10,000/- per month. Taking a clue from notification issued by the Union Territory Chandigarh coupled with educational qualification of the deceased, I do not find any reason to interfere in assessment of monthly income and the same is affirmed. The claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. As such, loss of dependency comes to Rs.15,12,000/- [Rs.21,60,000/- i.e. 10,000 x 12 x 18 + Rs.8,64,000/- (40% addition) – Rs.15,12,000/- (50%

deduction)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000.00 (Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court in ***Pranay Sethi's*** case (supra) and ***Sebastiani Lakra's*** case (supra)**.**

In view of the above, total compensation is Rs.15,42,000 and compensation awarded by the Tribunal is reduced to the extent of Rs.1,0,3000/- (16,45,000-15,42,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

04.10.2019
Mohan Bimbra

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