IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

248 **Date of decision: 03.07.2019**

FAO No.2165 of 2017 (O&M)

TATA AIG General Insurance Co. Ltd. ... Appellant

Versus

Lakshmi Devi and others ... Respondents

FAO No.2246 of 2017 (O&M)

TATA AIG General Insurance Co. Ltd. ... Appellant

Versus

Krishan Lal and others ... Respondents

FAO No.4311 of 2017 (O&M)

Lakshmi Devi and another ... Appellants

Versus

Joginder Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajesh K. Sharma, Advocate for the insurance company.
Mr. SS Momi, Advocate for the claimants
in FAO-2246-2017.
Mr. Abhijeet PS Chaudhary, Advocate for the claimants
in FAO-4311-2017.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2165, 2246 and 4311 of 2017 as these have emerged out of the same award dated 15.11.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been assessed on account of death of Ritu and Priyanka in a motor vehicular accident that took place on 07.04.2016.

FAO Nos.2165 and 2246 of 2017 have been filed by the TATA AIG General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas FAO No.4311 of 2017 has been filed by Lakshmi Devi and another (claimants) seeking enhancement of compensation on account of death of Priyanka.

FAO Nos.2165 and 2246 of 2017

The sole submission made by counsel for the insurance company is that as the deceased Ritu and Priyanka were gratuitous passengers in TATA Super Ace bearing No.HR-65-9940 (alleged offending vehicle), insurance company has wrongly been fastened with liability to pay compensation even though the insurance company has been given right of recovery against the insured after payment of compensation to the claimants. In support of his contention, he has relied upon judgments of this Court **Data Ram and another VS. TATA AIG General Insurance Co. Ltd. and others, FAO No.4290 of 2014 along with connected case, decided on 24.08.2017** and **Ranbir Chand VS. Tarsem Lal and others, FAO No.3242 of 2004 along with connected cases, decided on 20.09.2018.**

Counsel representing the respondents, on the contrary, would urge that the Tribunal has rightly fastened liability to pay compensation by the insurance company but interest of the insurance company has been secured by allowing recovery right against the insured. For this purpose, reliance has been placed upon judgment of Telangana and Andhra Pradesh High Court **The United India Insurance Co. Ltd. VS. Gurrala Laxmi Varaprasad and another, 2018(2) Civil J 899.**

Be that as it may, there is no dispute with the factual position that the deceased aged 13/14 years were gratuitous passengers in TATA Super Ace bearing No.HR-65-9940 which is a goods carrying vehicle. When the case is examined in the light of judgments of this Court, relied upon by counsel for the insurance company, there is no escape from conclusion that the insurance company is not liable to pay compensation for death of gratuitous passengers in a goods carrying vehicle in absence of any special contract between the insurer and insured covering risk of injury or death of a passenger carried in a goods vehicle other than owner or representative of the goods carried in the said vehicle. In the given scenario, the respondents cannot derive any advantage to their contention from the judgment **Gurrala Laxmi Varaprasad and another's case (supra)**. That being so, liability to pay compensation saddled upon the insurance company cannot be allowed to sustain and accordingly set aside. As a natural consequence, the insurance company is exonerated from paying compensation to the claimants. However, in case the insurance company has already paid compensation to the claimants, it shall be entitle to recover the same from the insured only.

In view of what has been discussed hereinbefore, the appeals are allowed in the aforesaid terms.

FAO No.4311 of 2017

The Tribunal awarded Rs.2,49,500/-, detailed hereunder:-

1. Annual notional income of the deceased	Rs.15,000/-
2. Multiplier	15
3. Loss of dependency	Rs.2,25,000/-
4. Non pecuniary damages and future prospects	Rs.20,000/-
5. Funeral expenses	Rs.2000/-
6. Loss of estate	Rs.2500/-

The deceased was 14 years old daughter of the claimants and student of 9th class. The Tribunal has rightly assessed notional income of the deceased and applied multiplier of 15 for computing loss of dependency. However, claimants shall be entitle to additional amount of Rs.13,000/- for funeral expenses as the Tribunal has awarded Rs.2000/- under this head. The additional amount of Rs.13,000/- shall be payable with interest @ 7.5% per annum from the date of petition till realisation, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

03.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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