**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 19.03.2019

1. FAO No.5033 of 2017(O&M)

Islam and another .....Appellants

Versus

Babita and others .....Respondents

2. FAO No.6256 of 2017(O&M)

Balbir and another .....Appellants

Versus

Islam and others .....Respondents

3. FAO No.3466 of 2018(O&M)

Babita and others .....Appellants

Versus

Islam and others .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. J.S. Saneta, Advocate
for the appellants in FAO No.5033 of 2017 and
for respondents No.1 and 2 in FAO No.6256 of 2017
and FAO No.3466 of 2018.

Mr. Wazir Singh, Advocate
for the appellants in FAO No.6256 of 2017.

Ms. Monika Jangra, Advocate

for the appellants in FAO No.3466 of 2018 and
for respondents No.1 to 3 in FAO No.5033 of 2017.

Mr. R.K. Bashamboo, Advocate
for respondent No.6 in FAO No.5033 of 2017 and
for respondent No.3 in FAO No.6256 of 2017 and
FAO No.3466 of 2018.

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RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO No.5033 of 2017 titled Islam and another Vs. Babita and others, FAO No.6256 of 2017 titled Balbir and another Vs. Islam and others and FAO No.3466 of 2018 titled Babita and others Vs. Islam and others are being disposed of. Common facts are being noticed.

[2]. FAO No.5033 of 2017 has been preferred by the driver and owner of the offending vehicle. FAO No.6256 of 2017 has been preferred by claimants No.4 and 5 i.e. parents of the deceased Ram Mehar for enhancement of compensation. FAO No.3466 of 2018 has been preferred by claimants No.1 to 3 for enhancement of compensation.

[3]. All the three appeals have arisen from one accident which took place on 18.08.2014 at 11:30 PM when Ram Mehar (since deceased) along with other labourers was going to village Kiwana on motorcycle which was being driven by him. When they reached at Chulkana turn, the offending vehicle came in a rash and negligent manner which was being driven by Islam and

hit the motorcycle of the deceased. Ram Mehar was shifted to hospital where he was declared dead. Criminal case was registered against the driver of the offending vehicle. Ram Mehar was 25 years of age at the time of accident and was a mason.

[4]. Claimants filed claim petition seeking award of compensation to the tune of Rs.20,00,000/- along with interest.

[5]. Motor Accident Claims Tribunal, Panipat (for short 'The Tribunal') held that the accident took place due to rash and negligent driving of driver of the offending vehicle. The age of the deceased was held to be 25 years at the time of accident. Deceased Ram Mehar was a self employed person. No documentary evidence was produced to prove his employment during course of his occupation. For want of any contract agreement of being a contractor and any account book, he was treated to be a labourer and his income was assessed to be Rs.5000/- per month. Tribunal after applying future prospects to the tune of 50%, assessed monthly income of the deceased to be Rs.7500/- i.e. Rs.90,000/- per annum. In view of composition of the family and as per ratio laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) Recent Civil Reports (Civil) 77***, deduction to the tune of 1/4th was applied towards personal expenses of the

deceased, thereby calculating the dependency of the claimants to be Rs.67,500/- per annum. Multiplier of 18 was applied keeping in view the age of the deceased, therefore, an amount of Rs.12,15,000/- was assessed as compensation. The Tribunal has awarded an amount of Rs.10,000/- towards transportation and last rites and an amount of Rs.10,000/- towards consortium over and above the amount of Rs.12,15,000/-. In this way, total amount of Rs.12,35,000/- was awarded along with interest @ 7.5% per annum from the date of filing of the claim petition till final realisation of the amount.

[6]. In FAO No.5033 of 2017, driver and owner of the offending vehicle have relied upon Annexure A-1 which was filed by way of application under Order 41 Rule 27 CPC. Insurance Company was absolved by the Tribunal on the premise that owner had not furnished copy of the route permit to show that the owner was having valid and effective route permit to drive the vehicle to the route in question at the time of accident. Notice was issued to the Insurance Company to explain the issue of route permit as to whether the same was a fundamental breach and covered under Section 149 of the Motor Vehicles Act. Appellants i.e. driver and owner of the offending vehicle relied upon RTI information (Annexure A-1) attached with the appeal and contended that the issue of route permit was not a

fundamental breach and the same was not covered under Section 149 of the Motor Vehicles Act. The vehicle in question did not require any route permit under Section 66 of the Motor Vehicles Act. Appellants relied upon ***Ashok Kumar Khemaka and another Vs. Oriental Insurance Co. Ltd. and others, 2014(3) RCR (Civil) 1018*** and ***Shinder Kaur and another Vs. Baldev Singh and others, 2014(7) PLR 644***.

[7]. Learned counsel for respondent No.6/Insurance Company sought time to verify the genuineness of the certificate Annexure A-1 attached with the appeal by way of additional evidence.

[8]. Today, during course of arguments, learned counsel for respondent No.6/Insurance Company accepted the correctness of Annexure A-1 and further pleaded no objection as to the Anneuxre A-1 to be taken on record.

[9]. In view of aforesaid position, I deem it appropriate to allow the application under Order 41 Rule 27 CPC and allow the production of Annexure A-1 on record.

[10]. Perusal of Annexure A-1 would show that the vehicle in question was registered in the office of Regional Transport Authority, Panipat. The route permit of the vehicle was not required as per Section 66 of the Motor Vehicles Act. The owner

of the vehicle had to deposit MV tax in the office. Learned counsel for respondent No.6 very candidly accepted the liability of the Insurance Company.

[11]. In view of aforesaid legal and factual position, FAO No.5033 of 2017 is accepted. Insurance Company is held liable to answer the claim of the claimants.

[12]. ***CM No.12315-CII of 2018 in FAO No.3466 of 2018***

There is a delay of 240 days in filing the appeal. For the reasons mentioned in the application, the same is allowed. Delay of 240 days in filing the appeal is hereby condoned.

[13]. ***FAO No.6256 of 2017 and FAO No.3466 of 2018***

Five claimants have joined hand before the Tribunal in filing the joint petition. Widow and minor children of the deceased have preferred FAO No.3466 of 2018 and parents of the deceased have preferred FAO No.6256 of 2017. Since Insurance Company has not preferred any appeal against the aforesaid award passed by the Tribunal, therefore, any claim with regard to application of increase towards future prospects cannot be entertained at the instance of the Insurance Company. The Tribunal has awarded an amount of Rs.10,000/- towards transportation and last rites and an amount of Rs.10,000/- towards consortium over and above the amount of Rs.12,15,000/-, but in view of ratio laid down in ***National***

Insurance Company Limited Vs. Pranay Sethi and others, 2017 SCC 1270, an amount of Rs.15,000/- towards transportation charges, an amount of Rs.15,000/- towards loss of estate and an amount of Rs.40,000/- towards consortium to the wife of the deceased has to be added to the aforesaid calculation of Rs.12,15,000/-.

[14]. The ratio laid down in ***National Insurance Company Limited Vs. Pranay Sethi and others case (supra)*** was considered by the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** and it was held that loss of consortium and loss of estate are other conventional heads for which compensation has to be awarded in the event of death of the bread earner. Since the Motor Vehicles Act is a beneficial and welfare legislation, therefore, it is the duty of the Court to award just compensation to the claimants irrespective of plea whether raised by the claimants or not. The consortium was held to be compendious term which encompasses spousal consortium, parental consortium and filial consortium. The right of consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. Spousal consortium would include sexual relations

with the deceased which is generally considered as a right to the surviving spouse for loss of company, society and other conjugal relations with the deceased. Parental consortium is payable to the children on premature death of a parent, which includes parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents for compensation in a case of death of their children. The Hon'ble Apex Court after due consideration of the ratio of ***National Insurance Company Limited Vs. Pranay Sethi and others case (supra)*** considered the aforesaid components of loss of love and affection and loss of consortium by awarding Rs.50,000/- and Rs.40,000/- respectively each to the claimants.

[15]. Since five claimants have filed the claim petition, therefore, in view of ratio laid down in ***Magma General Insurance Co. Ltd. case (supra)***, an amount of Rs.2,50,000/- can be awarded to the claimants towards loss of love and affection. Minor Sonu and Rohit would be entitled to Rs.40,000/- each towards parental consortium. Similarly, Balbir and Om Pati would be entitled to Rs.40,000/- each towards filial consortium. The total compensation would come out to be Rs.16,95,000/-. The enhanced amount of compensation i.e. Rs.4,60,000/- (16,95,000-12,35,000=4,60,000) shall carry interest @ 7.5% per

annum from the date of filing of the claim petition till final realisation of the amount.

[16]. In view of above, all the three appeals are disposed of.

19.03.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

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