

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

Date of decision: 10.12.2019

FAO No.7229 of 2017 (O&M)

National Insurance Co. Ltd.

... Appellant

Versus

Mukhtiar Kaur and others

... Respondents

FAO No.5018 of 2018 (O&M)

Mukhtiar Kaur and another

... Appellants

Versus

Kulwant Singh @ Dulla and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Pradeep Kumar, Advocate for the insurance company.

Mr. NK Verma, Advocate and
Mr. Anoop Verma, Advocate for the claimants.

Mr. BS Aulakh, Advocate for driver and owner.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.7229 of 2017 and 5018 of 2018 as these have emerged out of the same award dated 01.04.2017 passed by the Motor Accidents Claims Tribunal, Sri Muktsar Sahib whereby compensation has been assessed on account of death of Jasvir Singh in a motor vehicular accident that took place on 06.02.2015.

FAO No.7229 of 2017 has been filed by National Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the

other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and liability of the insurance company.

The Tribunal awarded Rs.10,18,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.9000/-
Multiplier	14
Deduction for personal expenses	1/3 rd
Loss of dependency	Rs.10,08,000/-
Expenses on funeral	Rs.5000/-
Loss of estate	Rs.5000/-

Counsel for the insurance company would argue that income of the deceased assessed by the Tribunal is on higher side and merits reduction. It is further argued that as the offending bus bearing No.PB-30-D-9624 did not possess permit at the time of accident, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants. To bring home his contention, it is argued that permit Ex.R5 was valid for 06.02.2015 but fee vide receipt Ex.R5/A was deposited at 18:05:49 meaning thereby that it was deposited after 6'o clock in the evening but the accident took place at 05.30 on 06.02.2015.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal assessing income of the deceased but pray for grant of adequate compensation by extending benefit of addition in income for future prospects and reasonable compensation under

conventional heads.

Counsel for respondents No.3 and 4 (driver and owner) has refuted contention of the insurance company with regard to violation of the policy conditions in the light of observations made by the Tribunal in para 22 of the award. It is further argued that as per document Ex.R5, there was a permit issued by District Transport Office, Sri Muktsar Sahib for one day i.e. 06.02.2015.

The plea of claimants is that deceased was working as construction contractor, mason and an agriculturist thereby earning Rs.1 lakh per month. They failed to adduce sufficient evidence to prove avocation and income of the deceased. They did not produce any document if deceased was owner or in possession of agricultural land. They have not examined any person with whom the deceased worked as a contractor or mason for construction.

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.7000/- per month. Claimants shall be entitle to addition in income for future prospects @ 25%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.9,80,000/- $[(7000 \times 12 \times 14) + (25\% \text{ future prospects}) - (1/3^{\text{rd}} \text{ deduction for personal expenses})]$.

Under conventional heads, compensation awarded 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.10,10,000/-. Compensation awarded by the Tribunal is Rs.8000/- more. As such, assessment made by the Tribunal is kept intact.

This brings the Court to question of permit in respect of offending bus owned by M/s Maan Bus Service, Sri Muktsar Sahib. Perusal of statement of Neeraj Kumar, Clerk, DTO office, Sri Muktsar Sahib reveals that temporary permit No.80/TP/DTO/MKS/2015 was issued for one day i.e. 06.02.2015 on the basis of deposit of fee of Rs.200/- vide receipt Ex.R5/A five minutes after 6'o clock in the evening. The occurrence in question took place at about 05.30 pm on 06.02.2015. It is surprising and mystifying that fee for issuance of permit was deposited after 6'o clock in the evening and permit was issued by the DTO for the whole day of 06.02.2015. The Tribunal did not bother to examine this vital aspect of the matter nor made any further inquiry as to the circumstances under which this permit has been issued on the basis of deposit of fee made subsequent to point of time when the accident in question took place. That being so, findings of the Tribunal, in para 22 of the award, can not be allowed to sustain and are accordingly set aside. The matter is remitted to the Tribunal for making further inquiry into the matter on the question of permit of the vehicle in question and thereafter decide whether there was a valid permit of the offending vehicle at the time of accident, if not so, of what

consequence. If on inquiry, the Tribunal arrives at a conclusion that issuance of permit is the result of manipulation, desirability of lodging criminal proceedings against the delinquent(s) may also be examined.

In view of what has been discussed hereinbefore, the appeals stand disposed of. The matter is remitted to the Tribunal for deciding the issue qua permit, a dispute *inter se* the insurance company and owner of the vehicle. The parties through their counsel are directed to appear before the Tribunal on 21.12.2019. The Tribunal shall decide the issue positively within three months of parties putting in appearance.

(REKHA MITTAL)
JUDGE

10.12.2019
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Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No