IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 03.04.2019

FAO No.2073 of 2015 (O&M)

Ram Kaur and another ... Appellants

Versus

Deepak Sethi and others ... Respondents

FAO No.3179 of 2015 (O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Ram Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. JS Cooner, Advocate
for the claimants.

Mr. DP Gupta, Advocate
for the insurance company.

Mr. Sanjay Jain, Advocate
for the driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2073 and 3179 of 2015 as these have emerged out of the same award dated 20.12.2014 passed by the Motor Accidents Claims Tribunal, Ambala whereby compensation has been assessed on account of death of Satpal in a motor vehicular accident that took place on 06.10.2013.

FAO No.2073 of 2015 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been preferred by the Oriental Insurance Co. Ltd. (hereinafter referred to as 'the insurance company').

Counsel for the insurance company would inform that the appeal has been preferred only on the question of driving licence.

FAO No.2073 of 2015

The Tribunal has awarded Rs.10,92,680/-. Counsel for the parties are ad idem that the deceased was an employee of Haryana Roadways and as such, compensation is required to be assessed in the light of judgment of this Court **New India Assurance Co. Ltd. Vs. Ajmero and others, FAO No.2648 of 2016, decided on 31.07.2017**.

The deceased was drawing salary of Rs.31,100/- per month and the same comes to Rs.3,73,200/- per annum. After deducting income tax (Rs.17,320/-), net salary of the deceased is Rs.3,55,880/-.

The deceased was 51 years and six months old at the time of occurrence and accordingly admissible multiplier is 11. Claimants shall be entitle to addition in income for future prospects @ 15%. The deduction for personal expenses would be $1/3^{rd}$. In this manner, loss of dependency is calculated at Rs.30,01,254/- [(355880 x 11) + (15% future prospects) – ($1/3^{rd}$ deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

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

Total compensation comes to Rs.30,71,254/-.

With regard to deduction qua financial assistance available to family of the deceased under the Haryana Compassionate Assistance to Dependents of deceased Government Employees Rules 2006 (in short 'Rules of 2006'), widow of the deceased would be entitle to financial assistance @ Rs.29,380/- per month for a period of six years and six months as the deceased was to retire at the age of 58 years, when examined in the light of Rule 5(c) of the Rules of 2006. The total amount comes to Rs.22,91,640/- and 50% thereof shall be amenable to deduction in the light of judgment in **Ajmero and others's case (supra)**. After deducting Rs.11,45,820/-, net compensation payable to the claimants is Rs.19,25,434/- (30,71,254 – 11,45,820). The additional amount is Rs.8,32,754/- (19,25,434 - 10,92,680), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO No.3179 of 2015

Counsel for the insurance company has challenged findings of the Tribunal on the question of driving licence by making submissions that driving licence possessed by Deepak Sethi was found to be fake though it was duly renewed by Licensing Authority, Mathura. It is argued that Mahesh Gupta RW3 was examined and stated that before engaging Deepak

Sethi as a driver, The Satnam Cooperative Transport Society Ltd., owner of the offending vehicle had taken all possible precautions namely his driving test was taken and even the driving licence was got verified. It is argued that Mahesh Gupta has not produced on record any report with regard to verification of driving licence sufficient to negate his plea that licence was got verified. It is further argued that even the driving licence was not produced before the police authority when the driver was got surrendered by registered owner of the vehicle.

Counsel representing respondents No.3 and 4 (driver and owner of offending vehicle) has supported findings of the Tribunal recorded in para 46 of the award when examined in the light of judgment of Hon'ble Supreme Court **Pepsu Road Transport Corporation Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 273.** It is further argued that in view of testimony of Mahesh Gupta RW3, contention of the insurance company that the insured has breached the terms and conditions of insurance policy cannot be allowed to sustain and has rightly been rejected by the Tribunal.

Mahesh Gupta appeared in the witness box to prove that Deepak Sethi was engaged as driver after testing his driving skills and examining the driving licence. He tendered into evidence his affidavit Ex.RW3/A by way of examination in chief. In para 5 of the affidavit, he has deposed that he personally went to Mathura to get the driving licence verified from the office of Assistant Regional Transport Office, Mathura and the concerned official after examining the driving licence of Deepak Sethi and their record confirmed about genuineness of said driving licence. No doubt, Sh. Mahesh Gupta has not produced on record any report on the basis of alleged verification made by him from the concerned office. When facts narrated by Mahesh Gupta are examined in the light of judgment of Hon'ble the Supreme Court **Pepsu Road Transport Corporation's case (supra),** I do not find any reason to differ with findings of the Tribunal that the insured has taken all possible precautions while engaging the services of driver and the owner cannot be held guilty of violating the terms and conditions of insurance policy. In this view of the matter, contention raised by the insurance company on the question of driving licence is not meritorious and accordingly rejected.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

03.04.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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