IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **F.A.O No. 3552 of 2012**

Roshan Lal Bansal and anr. ...Appellants

Versus

Man Singh and others ...Respondents

2. **F.A.O No. 6618 of 2016**

Inderjeet Singh ...Appellant

Versus

National Insurance Co. Ltd and others ...Respondents

Date of decision:- 15.01.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. I.D. Singla, Advocate, for the appellants in FAO No. 3552-2012 and for respondent Nos. 2 and 3 in FAO No. 6618-2016.

Mr. Sushil Saini, Advocate, for the appellant in FAO No. 6618-2016 and for respondent No. 2 in FAO No. 3552-2012

Mr. Suvir Dewan, Advocate, for respondent No. 3-Insurance Co.

RITU BAHRI J. (Oral)

C.M. No. 13090-CII-2016 in FAO No. 3552-2012

The present application has been filed by the applicant for permission to amend the grounds of appeal on the ground that it is the Insurance Company who is liable to pay the compensation.

After hearing learned counsel for the parties at length, the present application is allowed and the applicant-appellant is allowed to amend the grounds of appeal.

C.M. No. 22709-CII-2016 in FAO No. 6618-2016

For the reasons mentioned in the application, delay of 1628 days in filing of the appeal stands condoned.

The application stands disposed of.

<u>FAO No. 3552-2012 and FAO No. 6618-2016</u>

1. This order shall dispose of above two appeals whereby challenge is to award dated 09.02.2012 passed by the learned Motor Accident Claims Tribunal, (FTC) Panipat (for short, 'the Tribunal').

<u>FACTS NOT IN DISPUTE</u>

2. On 10.07.2009, Vinod was going with his friends in a car bearing registration No. HR-06M-1205 (Make Indica) and when they reached near village Machroli, at G.T. Road, Panipat then the offending vehicle i.e truck bearing registration No. HR-37-7595 which was going ahead of car applied brake at once and due to this, the car driven by Vinod came under the truck from behind. Due to this, Jawalkar died at the spot, Anand Bansal also died later on and Vinod suffered multiple and grievous injuries. The truck was being driven by Mann Singh and F.I.R No. 273 dated 10.07.2009 279/337/304-A IPC was registered at P.S. Samalkha.

COMPENSATION ASSESSED BY THE TRIBUNAL

3. Before the learned Tribunal, three separate claim petitions were filed, one by claimant-Vinod and two others were filed on account of death of Anand Bansal and Jawalkar. The learned Tribunal admitted the factum of accident, being caused by Mann Singh, as he was driving the truck in a rash and negligent manner. The learned Tribunal awarded the compensation in all the three petitions. Before this Court, the claim petition for enhancement

of the compensation has been filed by Roshan Lal Bansal and another, on account of death of their son. The learned Tribunal while granting compensation to the claimant-Roshan Lal Bansal took the salary of the deceased (20 years) at Rs.10,000/- and deducted 50%. The annual dependency came at Rs.60,000/- and applied the multiplier of 9 by taking in to the age of the claimants and awarded Rs.10,000/- towards loss of estate and Rs.10,000/- towards cost of funeral expenses. The total compensation of Rs.5,60,000/- has been awarded.

4. Learned counsel for the appellant contends that the Tribunal has erred in awarding the compensation to the tune of Rs.5,60,000/- only, as the deceased was 20 years of age and was serving as an Executive Engineer in TATA Tele Services Pvt. Ltd and earning Rs.2,30,000/- per annum. Nothing was awarded towards future prospects and the multiplier of 9 has wrongly been applied.

5. To give force to his contention, reference has been made to judgments of '***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77', 'Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54' and 'Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459', Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193.***

6. Learned counsel for the appellant (FAO No. 6618-2016) is relying upon judgment of this Court in a case of ***Charanjit Singh and others vs. Harish Kumar Sachdeva and others, 2018 (4) R.C.R (Civil) 993***

wherein the recovery rights were granted to Insurance Company against owner of another vehicle on account of non possession of fitness certificate. However, the Insurer failed to prove how non-possessing of a fitness certificate covered within purview and ambit of grounds envisaged in clause (a) or/and (b) of Section 149 (2) of the Act. This Court held that in the absence of legislature providing non-possessing of a fitness certificate, the insurer is not entitled for recovery rights against insured. In para 12 and 13, it has been observed as under:-

> *12. Section 149 of the Act deals with duty of the insurers to satisfy the judgments and awards against persons insured in respect of third party risks. Section 149(2) of the Act provides for the grounds on which an insurer to whom notice of bringing of proceedings before the Claims Tribunal is given can defend the action on any of the following grounds:-*
>
> > *"(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:— (i) a condition excluding the use of the vehicle—*
> >
> > *(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*
> >
> > *(b) for organised racing and speed testing, or*
> >
> > *(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*
> >
> > *(d) without side-car being attached where the vehicle is a motor cycle; or*
> >
> > *(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or*
> >
> > *(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or*
> >
> > *(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."*

13. Counsel for the insurer has failed to convince this Court as to how non-possessing of a fitness certificate is covered within the purview and ambit of grounds envisaged in clause (a) or/and (b) of Section 149(2) of the Act. In absence of legislature providing non-possessing of a fitness certificate to be a ground to defend action by the insurer, it is difficult to sustain findings of the Tribunal that the insurer is entitled to recovery right against the insured for his failure to produce the fitness certificate. That being so, findings recorded by the Tribunal giving recovery right in favour of the insurer are liable to be set aside and ordered accordingly. Resultantly, the insurer shall be liable to pay compensation to the claimants by way of indemnification of the insured in discharge of its obligation under the contract of insurance without any recovery right against the insured."

7. On the other hand, learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal and contends that the Insurance Company is not liable to pay the compensation.

8. I have heard learned counsel for the parties and gone through the record.

RE-ASSESSED COMPENSATION

9. The learned Tribunal while granting the compensation to the appellants had assessed the income of the deceased at Rs.10000/- per month only by observing that he was a private employee. However, this finding of the learned Tribunal deserves to be reversed, in view of the deposition of Nitin Sharma-Senior Executive of TATA Tele Services who appeared in witness box as P.W.4 and stated that the deceased was given appointment letter vide Ex PW4/A and his pay slip for the month of May and June, 2009 were exhibited as Ex PW4/B and Ex PW4/C. He was promoted vide letter dated 01.07.2009 (Ex PW4/D) and further shows the revised salary vide Ex

PW4/E, which comes to Rs.2,29,927/-. However, the net amount which was to be paid in the month of June, 2009 was Rs.13531.40. Once, the employer of the deceased had proved the salary slips of the deceased, the salary of the deceased can be taken at Rs.13500/- approximately. The deceased was 20 years of age and the accident in question is not in dispute and the offending vehicle was fully insured with the Insurance Company.

10. Reference at this stage can be made to a judgment of Hon'ble the Surpeme Court of India in a case of ***Amrit Bhanu Shali and others v. National Insurance Co. Ltd., 2012(4) RCR Civil 343*** wherein it has been held that the age of the deceased has to be seen and not the age of parents while awarding compensation.

11. Further it is the Insurance Company who is liable to pay the compensation, in view of ***Charanjit Singh's case (supra)***

12. In view of the above mentioned judgments, the compensation is re-assessed as under:-

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs.13500/- per month
(ii)	50% of (i) above to be added as future prospects=	Rs.13500+Rs.6750=Rs.20,250/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.20250-Rs.10125=Rs.10125/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.10125X 12 X 18= Rs.21,87,000/-
(v)	For love and affection to parents	Rs.1 lac (Rs. 50,000 each)
(vi)	Funeral charges	Rs.25,000/-
(vii)	Total Compensation awarded	Rs.23,12,000/-
	Enhanced amount of compensation	Rs.23,12,000-Rs.5,60,000=Rs.17,52,000/-

12. The enhanced amount of compensation of Rs.17,52,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall

carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. The Insurance Company is liable to pay the compensation to the claimants.

13. Accordingly, the award stands modified to the above extent and the present appeals are allowed.

14. Registry is directed to refund the amount of Rs.25,000/- to the appellant, deposited by him (FAO No. 6618-2016) at the time of filing of appeal.

15.01.2020 (***RITU BAHRI***)
G Arora ***JUDGE***