IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 13.2.2020

1. **FAO No. 5009 of 2014(O&M)**

Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Amandeep Kaur and others .....Respondents

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Sham Lal Bhalla, Advocate for respondents/claimants.

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2. **FAO No. 5013 of 2014(O&M)**

Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Amandeep Kaur and others .....Respondents

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Sham Lal Bhalla, Advocate for respondents/claimants.

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3. **FAO No. 7636 of 2014(O&M)**

Amandeep Kaur and another …..Appellants

VERSUS

Mohan R. Kale and others .....Respondents

Present: Mr. Sham Lal Bhalla, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate for the insurance company.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.5009, 5013 and 7636 of 2014 as these have emerged out of the same accident that took place on 29.03.2011 in which Rajvinder Singh died and Amandeep Kaur sustained injuries.

FAO Nos.5009 and 5013 of 2014 have been filed by Oriental Insurance Company Ltd. (hereinafter to be referred as 'insurance company') whereas FAO No.7636 of 2014 has been filed by Amandeep Kaur and another for grant of additional compensation on account of death Rajvinder Singh.

FAO Nos.5013 and 7636 of 2014

Counsel for the insurance company would contend that the appeal has been filed to assail findings of the Tribunal on issue No.1 and quantum of compensation.

The Motor Accidents Claims Tribunal, Fatehgarh Sahib (in short 'the Tribunal') awarded Rs.16,25,000/- detailed hereunder:-

Monthly income of the deceased	Rs.11,000/-
Deduction for personal expenses	1/4th
Multiplier	15
Loss of dependency	Rs.14,85,000/-
Last rites expenses	Rs.40,000/-
Loss of love and affection and loss of consortium	Rs.1,00,000/-

Counsel for the insurance company would argue that testimony of Amandeep Kaur CW-1 is not sufficient to establish that accident took place because of rash and negligent driving of offending vehicle i.e. Tanker No.MH-26-7680. It is argued that Amandeep Kaur in her examination in chief had deposed that offending vehicle came from left side of tempo traveler driven by Rajvinder Singh in which 10/14 persons went to Gurudwara Nanded Sahib for worship. In addition, it is argued that as more persons than permitted capacity of tempo (three) were travelling, contributory negligence is liable to be attributed to the deceased.

With regard to quantum of compensation, it is argued that income of deceased assessed is on higher side.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1. With regard to income, it is argued that deceased was working as transporter and property dealer thereby earning Rs.35,000/- per month and income may be assessed accordingly. He prays for extending benefit of addition in income for future prospects by relying upon judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

Counsel for the insurance company, in reply, would contend that Amandeep Kaur in her cross examination had admitted that she had mentioned in para 6 of the affidavit Ex.CW1/A that her father had been giving Rs.30,000/- per month as household expenses to her. It is further argued that there is no documentary evidence with regard to avocation and income of the deceased.

Amandeep Kaur sustained injuries in the occurrence, therefore, her presence on the spot is beyond suspicion. FIR Ex.C3 with English translation Ex.C4 was produced before the Tribunal which was lodged by Tejinder Kaur. Amandeep Kaur in her testimony by way of examination in chief has reiterated her version that when they were going from Patur to Gadegaon and reached Medeshi village near Hanuman Dhaba, from their left side tanker No.MH-26-7680 came from Malegaon at a very high speed and in a rash and negligent manner struck against tempo traveller with great force and as a result tempo traveller went in ditches. In cross examination, she had stated that the offending vehicle came from the rear side of vehicle driven by her husband. The road was not much wide but the occurrence took place on the metalled road.

The driver of offending vehicle did not appear in the witness box to counter testimony of Amandeep Kaur. No such fact has been elicited in cross examination of Amandeep Kaur that accident is the result of negligence attributable to the deceased or because of more persons being occupants of tempo traveller, in any manner, attributed to happening of the occurrence. In this view of the matter, I find myself unable to accept contention of the insurance company that findings of the Tribunal on issue No.1 are erroneous and warrant intervention. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Mohammad Siddiquie and another Vs. National Insurance Co. Ltd. and others, 2020(1) RCR (Civil) 689**.

This brings the Court to compensation assessed by the Tribunal. Amandeep Kaur in her testimony had deposed that her husband was doing the business of property dealing and transporter thereby earning Rs.35,000/- per month. The claimants did not produce any documents to prove that any vehicle was owned by the deceased or he had been hiring vehicles of others for doing the business of transporter. Similarly, there is no evidence in the shape of documentary evidence that deceased was doing property dealing business. Testimony of Amandeep Kaur with regard to avocation and income of the deceased does not find corroboration from an independent source. In the given circumstances, it can safely be held that claimants failed to adduce sufficient much less cogent evidence to prove avocation and income of the deceased. No doubt, in para 6 of the affidavit of Amandeep Kaur, there is reference to her father giving Rs.30,000/- per month but reading of this para as a whole makes it evident that in place of husband the word 'father' has been used in respect of giving Rs.30,000/- for household expenses.

Claimants produced copy of saving bank account in the name of Rajvinder Singh and Kulwinder Singh sons of Kesar Singh marked as Ex.C1 wherein there are large number of entries with regard to deposit and withdrawal. Since the account is in the joint name of Rajvinder Singh and Kulwinder Singh, no clear picture emerges as to at whose behest the deposits were made. The claimants did not examine Kulwinder Singh to prove that money deposited in the said account represented earnings of the deceased. Taking a cumulative view of materials on record coupled with minimum wage available at the relevant time, income of the deceased is assessed at Rs.9000/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 25%. As the claim has been filed by the widow and minor son of the deceased, admissible deduction for personal and living expenses would be 1/3rd. In this manner, loss of dependency comes to Rs.13,50,000/- [Rs.16,20,000/- (Rs.9000 x 12 x 15) + Rs.4,05,000/- (25% addition towards future prospects) – Rs.6,75,000/- (1/3rd deduction towards personal expenses)].

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

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation is Rs.14,20,000/- and compensation is reduced to the extent of Rs.2,05,000/- (Rs.16,25,000/- - Rs.14,20,000/-). The insurance company shall be entitle to recover the excess amount, if already paid to the claimants, by filing an appropriate application before the Tribunal.

The appeal filed by the insurance company is partly allowed and appeal filed by the claimants is dismissed in the aforesaid terms.

FAO No.5009 of 2014

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

The Tribunal awarded Rs.1,45,000/- detailed hereunder:-

Loss of income	Rs,90,000/-
Sufferings and trauma	Rs.25,000/-
Medical expenses	Rs.20,000/-
Loss of amenities and enjoyment of life	Rs.10,000/-

Counsel for the appellant would argue that assessment made by the Tribunal is absolutely arbitrary and whimsical. The Tribunal despite noticing that claimant had not produced any disability certificate and in absence of any evidence of hospitalization, nature of injuries and treatment has proceeded to assess loss of earning to the tune of Rs.90,000/- by applying multiplier method. It is further argued that since the claimant did not adduce sufficient much less cogent evidence to prove loss suffered by her, compensation allowed by the Tribunal cannot sustain.

Counsel representing the claimant/respondent would argue that claimant was one of the occupants of vehicle driven by her husband Rajvinder Singh who died in the accident.

Perusal of the award would reveal that in para 8, there is reference to documents produced by claimant namely medical treatment by Ozone Multispeciality Hospital Critical Care Centre, Holycross Convent Road, Akola and Ex.C2 and C3 i.e. medical treatment record issued by Dr. Sandhu's Pathology and Imaging Centre, Chandigarh and copies marked A and B of discharge slip. Document Ex.C1 does not reveal anything with regard to injuries or treatment. Ex.C2 and C3 pertains to some blood tests conducted in May 2011 but there is nothing to prove that these tests were got conducted on account of sustaining injuries in the accident. Similarly, the documents Mark A and B cannot be connected with the treatment received in respect of injuries, if any. As a matter of fact, there is no evidence on record with regard to any injuries, medical treatment or expenses incurred in this regard. The Tribunal, for the reasons best known, has even proceeded to assess loss of income by applying multiplier method. In absence of any clear evidence on record, compensation assessed by the Tribunal is reduced to Rs.5000/- payable with interest at the rate of 7.5% per annum from the date of petition till realization. The insurance company shall be entitle to recover the excess amount, if any, already paid to the claimant by filing an appropriate application before the Tribunal.

Disposed of accordingly.

A copy of the award be sent to the Presiding Officer concerned for taking care in future.

FEBRUARY 13, 2020 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no