

REPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 465/2003

SMT. RAJNI KHANNA & OTHER Appellants

Through: Mr. O.P. Mannie, Advocate.

versus

SH. DAYA CHAND & ORS.

..... Respondents

**Through: Ms. Shantha Devi Raman, Advocate
for the respondent No.3 – Insurance
Company.**

AND

+ FAO 352/2003

NATIONAL INSURANCE CO LTD Appellant

Through: Ms. Shantha Devi Raman, Advocate

versus

DAYA CHAND & ORS.

..... Respondents

**Through: None for the respondents No.1 and 2.
Mr. O.P. Mannie, Advocate for the
Respondents No.3 and 4.**

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Date of Decision : August 01, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT (ORAL)

: REVA KHETRAPAL, J.

1. By this judgment, it is proposed to decide two appeals being FAO No. 465/2003 entitled “*Smt. Rajni Khanna and Others versus Daya Chand & Ors.*” and FAO No. 352/2003 entitled “*National Insurance Co. Ltd. versus Daya Chand & Ors.*” The first of these two appeals has been filed by the claimants seeking enhancement of the award amount, while the second appeal has been filed by the Insurance Company praying for the setting aside of the judgment and award dated 13.02.2003 on the ground that the insured having committed breach of the policy conditions, the insurer was not liable to pay compensation to the claimants. It is proposed to deal with the said appeals one by one.

FAO No. 465/2003 entitled “Smt. Rajni Khanna and Others versus Daya Chand & Ors.”

2. The brief facts leading to the filing of the present appeal are that on 17.05.1995 at about 10:40 p.m. one Kamal Kishore Khanna (hereinafter referred to as “the deceased”) while he was crossing the road to go to the G.T.Market, Pritampura, was hit by the offending vehicle, a truck bearing No. RSA 6585, driven by the respondent No.1, owned by the respondent No.2 and insured with respondent No.3. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the widow and minor daughter of the deceased claiming the compensation of ₹ 20,00,000/- for the untimely demise of the deceased. The learned Tribunal by its judgment and award dated 13.02.2003 awarded a sum of ₹ 8,15,800/- (Rupees eight lakh fifteen thousand and eight hundred only) with interest at the rate of 9% per annum from the date of the filing of the petition, that is, 17.07.2005.

3. The sole grievance of the appellants in the appeal is that a very meagre amount of compensation has been awarded by the Claims

Tribunal. It is contended by the learned counsel for the appellants that as per the testimony of PW1 Smt. Rajni Khanna, the wife of the deceased, her husband was employed with the Central Bank of India as a clerk on a monthly salary of ₹ 8,000/- (Rupees eight thousand only). His date of birth was 13.09.1953, meaning thereby that at the time of the accident, he was about 41-42 years of age on the date of the accident. He left behind him his wife, the appellant No.1 aged 34 years at the time of the accident and a minor daughter, the appellant No.2 aged 7 years on the said date. Keeping in view the aforesaid facts, the amount of compensation awarded was not just and fair.

4. Mr. O.P. Mannie, the learned counsel for the appellants strongly contended that the manner of computation of the compensation adopted by the learned Claims Tribunal was also not in accordance with the settled principles of law as enunciated in the various decisions of the Hon'ble Supreme Court. He sought to challenge the award on the following three grounds:-

(i) Indisputably, the age of the deceased was only

41 years and 8 months at the time of the accident.

The learned Tribunal, however, completely lost sight of the fact that the deceased was to retire at the age of 60 years in September, 2013 and as such the loss of dependency of the appellants deserved to be calculated after taking into consideration the future prospects of advancement of the deceased in his job. The Claims Tribunal thus erred in not taking into account the future prospects of increase in the income of the deceased. The increase in the income of the deceased ought to have been calculated on the basis that had the deceased not died an untimely death in the accident, he would have on an average earned at least 30% more in the coming years till he attained the age of superannuation (see *Smt. Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*).

(ii) The learned Tribunal erred in adopting the multiplier of 13, instead of the multiplier of 14, to augment the multiplicand constituting the annual loss of dependency of the appellants. The deceased was less than 42 years of the age and the appropriate multiplier where the age of the deceased is between 41 years and 45 years is the multiplier of 14.

(iii) The learned Tribunal erred in not awarding to the appellants the funeral expenses of the deceased and the token amounts awarded for non-pecuniary damages under the heads of loss of love and affection of the deceased, loss of consortium to the appellant No.1 and loss of estate of the deceased.

5. To counter the contentions of Mr. O.P. Mannie, the learned counsel for the appellants, Ms. Shantha Devi Raman, the learned counsel for the Insurance Company sought to support the award passed by the learned Tribunal by urging that no enhancement in the

award amount was called for. She also submitted that the interest awarded by the learned Tribunal at the rate of 9% per annum was excessive.

6. The undisputed factual position as it emerges from the testimonies of PW-1, Smt. Rajni Khanna, the wife of the deceased and PW2 Vidhya Sagar Aggarwal, Assistant Manager of the Central Bank of India, who proved on record the salary certificate of the deceased as Exhibit PW-2/1 alongwith his leave record Exhibit PW-2/2, is that at the time of his accidental death, the deceased had a take home salary of ₹ 8,000/- (Rupees eight thousand only) per month. It also stands established on record that the deceased was at the time of accident about 41 years of age. He was to retire at the age of 60 years in September, 2013. He died on 17.05.1995 and certainly in the working span of 18 years, his salary would have increased considerably. However, keeping in view the dicta laid down by the Hon'ble Supreme Court with a view to ensure uniformity in the method of assessment of compensation by all Courts and Tribunals in the country in the case of *Smt. Sarla Verma (supra)*, an addition of

30% would be warranted on his salary at the time of his death. The average monthly income of the deceased, thus, works out to ₹ 10,400/- {₹ 8,000/- (income at the time of death of the deceased) + ₹ 2,400/- (30% increase of income)}. Deducting one-third therefrom towards his personal expenses, the loss of dependency of the appellants comes to ₹ 6,933/- (Rupees six thousand nine hundred and thirty three only) per month, that is, ₹ 83,196/- (Rupees eighty three thousand and one hundred ninety six only) per annum. Though the multiplier of 15 is set out in the Second Schedule of the Motor Vehicles Act, the multiplier for the age-group of persons between 41 years and 45 years as tabulated in the case of *Smt. Sarla Verma (supra)* is the multiplier of 14. Thus calculated, the total loss of dependency of the appellants works out to ₹ 11,64,744/- {Rupees eleven lakhs sixty four thousand seven hundred and forty four only}{₹ 83,196/- X 14}. To this amount, a sum of ₹ 10,000/- (Rupees ten thousand only) towards the loss of love and affection of the deceased, a sum of ₹ 10,000/- (Rupees ten thousand only) towards the loss of consortium, a sum of ₹ 10,000/- (Rupees ten thousand only)

towards loss of estate and a sum of ₹ 5,000/- (Rupees five thousand only) towards the funeral expenses and last rites of the deceased are added, and in all ₹ 11,99,744 /- (Rupees eleven lakh ninety nine thousand seven hundred and forty four only) which for the sake of convenience may be rounded off to ₹ 12,00,000/- (Rupees twelve lakh only) is awarded to the appellants.

7. The award is modified to the aforesaid extent. The enhanced compensation shall be paid to the appellants by the respondent No.3 within 30 days from today along with interest at the rate of 9% per annum on the amount awarded by the Tribunal and at the rate of 7.5% per annum on the enhanced amount. The enhanced amount shall be apportioned and distributed by the learned Tribunal keeping in view all the facts and circumstances of the case.

FAO No. 352/2003 entitled “National Insurance Co. Ltd. versus Daya Chand & Ors.”

8. Adverting now to the appeal of M/s. National Insurance Company Limited, wherein the appellant has challenged the impugned award on the ground that the respondent No.2, the owner

had committed breach of the terms and conditions of the policy by allowing the respondent No.1 to drive the offending truck, which falls in the category of Heavy Transport Vehicle (for short “HTV”) whereas the driver possessed the licence to drive only Light Motor Vehicle (for short “LMV”). It is pertinent to mention at the outset that the respondents 1 and 2, the alleged driver and owner of the offending vehicle did not contest the case, though they were duly served, and were accordingly proceeded ex-parte.

9. In order to substantiate its aforesaid defence, the appellant in the course of evidence before the learned Tribunal, examined R3W2, an official from the Licencing Authority, Alwar, who deposed that the licence in question was issued by their office in the name of one Daya Ram, son of Shri Kajodia, authorizing him to drive a Light Motor Vehicle. The appellant also examined R3W1, an official of the appellant – Insurance Company to prove the breach of the policy conditions committed by the respondent No.2, by producing the insurance policy through the said witness.

10. The learned Tribunal on the basis of the deposition of R3W2, viz., the witness from the Licencing Authority, Alwar held that the driving licence was not issued in the name of the appellant, but in the name of one Daya Ram, son of Shri Kajodia, and accordingly negatived the defence of the Insurance Company. The Tribunal further observed that as per the seizure memo prepared by the police, the name of the driver of the offending vehicle had been mentioned as Daya Ram, son of Roop Chand, resident of Village Sona, Pahar Colony, Police Station Sohna, District Gurgaon, Haryana and, as such, it did not find any ground to accept the contention of the appellant – Insurance Company that it was not liable to pay the compensation on the ground that it was a case of violation of the terms and conditions of the policy.

11. Ms. Shantha Devi Raman, the learned counsel for the appellant has assailed the aforesaid findings of the learned Tribunal on the ground that the respondent No.1 did not dispute that he was involved in the accident nor appeared in the witness-box to state that he was not holding the driving licence in question. She contended that as a

matter of fact, the learned Tribunal failed to notice that the driving licence number was initially given by the respondent No.1 himself to the police, who recorded the same in the seizure memo. It was further contended by her that in view of the fact that evidence had been led by the appellant, which clearly proved that the said licence was an invalid licence, the learned Tribunal ought not to have fastened the liability on the Insurance Company.

12. The further submission of the counsel for the appellant is that the same driver, namely, the respondent No.1, who was holding the licence was tried as an accused by the criminal court albeit acquitted by the said court for the offence of driving the vehicle in a rash and negligent manner at the time of the accident. Thus, she submitted that there was no anomaly as to the identity of the driver in the criminal court also. She further emphasised that in the seizure memo itself, the police had recorded the name of respondent No.1 as Daya Ram @ Daya Chand @ Lala and therefore Daya Rama and Daya Chand must be taken to be the one and the same person.

13. Learned counsel further contended that the appellant had on more than one date of hearing attempted to procure the presence of the respondent No.1 in the witness-box and had even deposited the process fee, diet money, etc. for summoning the respondent No.1 and, as a matter of fact, the appellant had proved the service of notice upon respondent no.1 and made a prayer to the learned Tribunal for issuance of warrants to examine the respondent No.1. In the circumstances, the learned Tribunal clearly erred in closing the evidence of the appellant without affording to it further opportunity to examine the respondent No.1 in the witness-box. She submitted that had the appellant been permitted to examine the respondent no.1, it would have come to light that the driving licence in question was in fact the driving licence of the respondent No.1. Even otherwise, the driving licence had the photograph of the person to whom the licence had been issued, which, the Tribunal would have had the occasion to compare had the coercive process for summoning the respondent No.1 been set in motion by the Tribunal.

14. In the aforesaid context, reliance was also placed by Ms. Raman upon a writing procured by the investigator of the appellant/ Insurance Company from the respondent No.1 himself to the effect that the police had wrongly recorded his father's name as Roop Chand instead of Kajodia in the criminal case. A copy of the said writing obtained by the Investigator is placed on record by the counsel for the appellant/ Insurance Company along with an application under Order 41 Rule 27 of the Code of Civil Procedure praying for permission to lead additional evidence.

15. Having carefully considered the matter from all angles, I am of the view that it will be just and proper for this court to allow the appellant to lead additional evidence on the aspect of the driving licence of the respondent No.1. The defence of the Insurance Company is that the respondent No.1 was driving a heavy transport vehicle whereas his licence authorized him to drive only a light motor vehicle. It is settled law that where the driver of the offending vehicle is authorized to drive a light motor vehicle and meets with an accident while driving a heavy transport vehicle, the owner cannot escape the

liability of the payment of the insurance claim to the victims of the accidents. As is clear from the record, the learned Tribunal, totally ignored the fact that on two occasions the appellant/Insurance Company had tried to summon the respondent No.1 as its witness and taken all the necessary steps for service upon him. In such circumstances, the learned Tribunal, in my view, ought not to have closed the evidence of the appellant/ Insurance Company in a hasty manner without affording further opportunity to the Insurance Company to take coercive steps for procuring the attendance of the witness. This being so, I am of the view that it would be in the interest of justice if the matter is remanded to the learned Tribunal for recording the evidence of the Insurance Company and the concerned police personnel to enable the appellant to prove that the respondent No.1 was the holder of the disputed driving licence.

16. The appeal is accordingly allowed. Parties are directed to appear before the learned Tribunal on 5th September, 2011, on which date the Tribunal shall give directions with regard to the summoning

of witnesses, including the respondent No.1, on a date convenient to all concerned.

17. To conclude, both the appeals are allowed to the extent stated hereinabove.

18. Records of the Tribunal be sent back forthwith through a special messenger.

**REVA KHETRAPAL
(JUDGE)**

**AUGUST 01, 2011
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