

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

Judgment reserved on : 30.07.2014

Judgment pronounced on : 23.09.2014

+ **MAC.APP. 1102/2011 & CM No.22028/2011**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD..... Appellant

Through **Mr.Rajat Brar, Advocate**

versus

PARAMJEET KAUR & ORS

..... Respondent

Through **Ms.Neha Gupta, Advocate for R-1 to R-5**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed by the Insurance Company seeking to assail the order of the Tribunal dated 15.09.2011. The brief facts are that the deceased Rajender Saini was riding on a motorcycle and at Delhi Gurgaon Road NH 8 Mahipalpur Flyover. It was hit by a truck and the deceased sustained fatal injuries as he came under the rear wheel of the truck and died in the accident. The claim petition was filed under section 166 and 140 of the Motor Vehicles Act, 1988 by his dependents.

2. Based on the pleadings the following issues were framed:-

“1.Whether Late Rajinder Saini died due to injuries received by him in an accident on 26.10.2009 at about 11.50 PM on Delhi Gurgaon Road NH 8, Mahipal Pur flyover, New Delhi which was caused due to rash and negligent driving of Tata Truck No.HR 55 G 4226 by R1, the vehicle owned by R2 and insured with R3 Insurance Company? ...OPP

2.The amount of compensation petitioners are entitled to?

3. Relief.”

3. Based on the evidence on record the Tribunal recorded that the accident took place due to the negligence of the driver of the truck/respondent No.6.

4. On compensation the Tribunal awarded the following compensation:-

“Loss of dependency	:	Rs.24,30,000/-
Loss of love and affection	:	Rs.1,25,000/-
Loss of consortium	:	Rs.10,000/-
Funeral Expenses	:	Rs.10,000/-
Loss of Estate	:	Rs.10,000/-
Less : interim award paid vide order Dated 10.08.2009	:	(-)Rs.50,000/-
Total	:	Rs.25,35,000/-

5. Learned counsel for the appellant submits that it was the case of the appellant that the deceased was 36 years of age and was a commercial driver getting a salary of Rs.12,000/- per month. Based on the testimony of the employer PW-2 who said that deceased was employed by his company and in the year 2007 was getting a salary of Rs.11,000/- per month and this was enhanced to Rs.12,000/- per month in 2008, the Tribunal accepted the salary of Rs.12,000/- per month. Future prospects of 50% were added to the said income.

6. Learned counsel appearing for the appellant submits that PW-2 the employer in his testimony had exhibited his profit and loss accounts for the Assessment Year 2009-10 where he had shown total salary and wages payable at Rs.1,48,600/-. He relies on certain terms and conditions that no driver shall perform duty for more than eight hours daily and that there shall be two drivers for buses that ply for more than eight hours. Based on this, he submits that the evidence of PW-2 shows that in view of the fact that the total salary and wages paid for the Financial Year was Rs.1,48,600/- the

salary of the deceased could not be more than Rs.4119/- per month as the employer would have to engage at least two drivers. He secondly submits that the future prospects of 50% had been erroneously given contrary to the judgment of this Court in the case of ***Royal Sundram Alliance Insurance Company Ltd. vs. Vimla Devi and others*** in MAC App.No.1192/2012 dated 28.05.2014. He submits that the deceased was having a temporary job and does not fall within the exceptions carved out by the Supreme Court in the case of ***Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121***. He thirdly submits that the Award notes that the Tribunal based on the report of the Investigating officer and the evidence of R-3W1 concluded that the driver respondent No.6 was driving the vehicle using a fake license. Hence, he submits that in view of the judgment of the Supreme Court in CA No.231/2012 in ***United India Insurance Company Ltd. vs. Sujata Arora***, the appellant company could not be fastened with any liability. He submits that the Award erroneously directs the appellant to pay the Awarded amount with recovery rights being awarded to the appellant against the owner and the driver, namely, respondents No.6 and 7.

7. As far as the first contention of learned counsel for the appellant is concerned, PW-2 Mr.Niraj Kumar Singhal in his testimony has stated as follows:-

“In the year 2007 deceased Rajender Saini joined me as a bus driver on monthly salary of Rs.11,000/-. In 2008 his salary was enhanced to Rs.12,000/- per month.”

8. In the cross-examination he stated as follows:-

“I did not issued any appointment letter to the deceased in 2007. I have duly shown the payment made to the deceased in my income tax return at page no.4 of my ITR/statement of account pertaining to the deceased only. I did not maintain

any register/payment voucher as to the payment made to the deceased. It is wrong to suggest that the deceased never worked with me as a driver has deposed above never he was paid anything as indicated in the statement. It is further wrong to suggest that I am deposing falsely.”

9. There is no reason to disbelieve the said submission of the said witness. It is difficult to accept the contention of the learned counsel for the appellant that a commercial driver would be paid for driving a commercial vehicle only Rs.4,000/- per month. At this rate even in 2009, it would hardly be possible to get a trained driver for a commercial vehicle. The said contention of the appellant is hence accordingly rejected.

10. On the issue of a fake driving license the Tribunal has given the right to the appellant to recover the awarded amount from the owner and the driver jointly and severally.

11. The Three Judges Bench of the Supreme Court in the case of *National Insurance Co. Ltd. vs. Swaran Singh & Ors., (2004) 3 SCC 297* held as follows:

“51. Under the Motor Vehicles Act holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof.

51. It is trite that where the insurers relying upon the provisions of violation of law by the assured takes an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured. In some cases violation of criminal law particularly, violation of the provisions of the Motor Vehicles Act may result in absolving the insurers but, the same may not

necessarily hold good in the case of a third party. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be".

"104. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

105. Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle.

106. It is well-settled rule of law and should not ordinarily be deviated from...."

"110. The summary of our findings to the various issues as raised in these petitions are as follows:

(i)

(ii)

(iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time,

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them."

12. In view of the above legal position, a perusal of the evidence of Sh.

Sachin Ohri R3W1 does not show in any manner, any willful or deliberate default on the part of the offending vehicle. Hence, there are no grounds to interfere with the direction given in the Award regarding grant of recovery rights to the appellant on making payment of the claim amount.

13. Coming to the last submission of learned counsel for the appellant, namely, on future prospects. I can take judicial note of the fact that minimum wages for an unskilled worker in 2002 were Rs. 2679.70/- P.M. and in 2012 were Rs.7020/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

14. In case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

15. In the case of *Smt.Savita vs. Bindar Singh & Ors.*, (2014) 4 SCC 505, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of *V.Mekala vs. M.Malathi & Anr.*, 2014 ACJ 1441, the Supreme Court in the case of a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

16. In the facts and circumstances of this case, the Tribunal was justified in adding 50% to the income of the deceased based on future prospects rise due to price rise. It was necessary for computation of just and fair compensation.

17. There is no merit. The appeal is dismissed.

18. As per the interim order of this Court dated 07.12.2011 the appellant was directed to deposit the entire award amount in State Bank of India, Saket Court Branch, New Delhi. The said amount be released to the

claimants proportionately as per the directions in the Award. The Statutory amount deposited by the appellant at the time of filing of the appeal may be released to the appellant.

**JAYANT NATH
(JUDGE)**

SEPTEMBER 23, 2014