

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.1377 of 1995 (O&M)
Date of Decision: February 10, 2015**

The New India Assurance Company Ltd. ...Appellant

Versus

Veena Madan and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Bhupesh Dogra, Advocate
for the appellant.

Mr. Inderjit Sharma, Advocate
for respondent No.4.

FATEH DEEP SINGH, J.

The appellant-Insurer has challenged the findings of learned Motor Accident Claims Tribunal, Patiala dated 6.2.1985 whereby, it has granted compensation to the tune of ₹5,40,000/- for the death of Ajay Kumar Madan husband of the claimant Veena Madan.

At the very onset of his arguments learned counsel for the appellant has limited his arguments to the very quantum of the compensation and has not challenged the mode of the accident qua issue No.1 which has been decided in favour of claimants. It is well established on the records as to the *inter se* relationship and the post mortem report Ex.AX shows that deceased was aged around 35 years. Though, the wife claimed that he was aged around 34 years and, thus, it can be safely adduced

in the absence of any contrary evidence that the deceased at the time of his death was aged around 34-35 years. It is proved by AW7 Jatinder Sharma, Assistant Engineer, Eicher Tractor Company that the deceased was employed with them and was drawing ₹4546/- per month and the learned Tribunal on the basis of the same considering rounding off the income to ₹4500/- per month has deducted 1/3rd of the earnings and applied multiplier of 15 and has granted compensation to the tune of ₹5,40,000/- and though has failed to take into consideration the compensation under the conventional heads but since the claimants have not assailed of the same apparently the arguments of the counsel for the appellant as has been submitted by the respondents side is rather on the lower side qua the claimants and cannot be termed as more than what is just and fair.

A feeble attempt has been made on behalf of the appellant over the very legality and validity of the driving licence. The Court on commission has examined A.K. Shrivastva, Regional Inspector (Technical), Allahabad who after tendering copy of driving licence R/20397/91 dated 23.12.1991 in the name of Rajinder Singh son of Jeet Singh so claimed to be the truck driver and it is stated by this witness that the licence has not been issued as per the official record and that in fact the driving licence No.R-20397/Allahabad/85 claimed by the driver has been issued in the name of Rattan Mittal son of Jai Parkash Mittal on 21.9.1985. Though, it is submitted on behalf of the respondents that witness could not identify the signatures of the official, who has signed the same goes against them certainly does not impresses the Court as neither driver nor the owner stepped into

the witness box to testify and to establish their stand and, therefore, driving licence Ex.R1 cannot be termed to be a legal, valid and effective driving licence at the time of the said accident. Learned Tribunal has taken a pure lackadaisical approach into the matter and on its own has sought to come to the aid of the owner by holding that it is not expected of the owner to visit the issuing authority office to verify the driving licence at the time of engagement of driver and on this premise has held the Insurer liable to pay the compensation amount which is utterly wrong interpretation. Since the onus lay upon the Insurer to prove the genuineness of the driving licence which it had done and same has remained unrebutted impels this Court to reverse the findings qua this aspect holding that the driver of the offending vehicle was not holding legal, valid and effective driving licence at the time of accident. Therefore, though the Insurer is initially liable to pay the compensation amount but it reserves its right to recover the amount from the owner and the driver in the absence of any cogent evidence by the owner to escape from the rigours of law and thus the Insurer would recover the amount from the owner and driver jointly and severally. In view of which, the appeal is allowed to that extent bestowing the recovery rights upon the appellant-Insurer. Appeal is disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

February 10, 2015

aarti