

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2397 of 2001 (O&M)
Date of decision .05. 2015.

State of Haryana

..... Appellant.

versus

Smt. Suman Lata and others

..... Respondents.

FAO No. 2398 of 2001 and
Cross Objections No.35-CII of 2002

State of Haryana and others

..... Appellant.

versus

Smt. Shanti Devi and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes

Present : Shri Gaurav Bansal, AAG, Haryana for the appellant(s) in both appeals.
Shri Sanjiv Pabbi, Advocate for respondent No.7.in both appeals.
Shri Partap Singh, Advocate for x-objectors. .

K.C.PURI, J.

By this common judgment I intend to dispose of FAO No. 2397 of 2001 (O&M) titled as State of Haryana versus Smt. Suman Lata and others and FAO No. 2398 of 2001 (O&M) titled as State of Haryana versus Smt. Shanti Devi and others and Cross Objections No.35-CII of

2002 preferred by respondent Nos.1 and 2. For convenience facts are being taken from FAO No. 2397 of 2001 (O&M) titled as State of Haryana versus Smt. Suman Lata and others.

2. State of Haryana and General Manager, Haryana Roadways, Chandigarh have directed FAOs No. 2397 of 2001 and FAOs No. 2398 of 2001 (O&M) against the award dated 22.03.2001 passed by Shri R.S.Madan, the then learned Motor Accidents Claims Tribunal, Rohtak vide which the claim petitions have been partly accepted granting a sum of Rs.4,80,000/- along with interest @ 9% per annum in respect of death of Jai Singh and Rs.5,04,000/- were granted in respect of death of Zile Singh.

3. Briefly stated Suman Lata widow and her children have filed claim petition claiming compensation to the tune of Rs.24,00,000/- in respect of death of Jai Singh in a motor vehicular accident. It is pleaded that Jai Singh along with Zile Singh Chahal was going from Rohtak to Chandigarh in his Maruti Car bearing registration No.HR-12C/7534. At about 1.30pm when they reached near the turning of Sector 2 at Pipli on Rohtak Chandigarh Road, a bus bearing registration No. HR-37/7036 being driven by Ram Lal respondent No.1 rashly and negligent and at a very high speed came from the opposite direction i.e., from Chandigarh side and dashed against the Maruti Car after coming on the wrong side. Jai Singh was driving the car on its correct side of the road at slow speed. The impact of accident was so strong that the Maruti car entangled underneath the offending bus which dragged the Maruti Car to a distance of about 10 paces. Jai Singh along-with Zile Singh the other occupants of the Maruti car sustained grievous multiple injuries on their person. Both the

injured/occupants of the Maruti Car were taken out by the passers-by with the intention to save their lives but both of them succumbed to their injuries at the spot. The driver of the offending bus fled away from the spot taking the benefit of the crowd. The accident was caused due to the sole rash and negligent driving of respondent No.1. Respondent No.1 did not blow the horn nor followed the traffic rules. Kagir Singh son of Santokh Singh resident of H.No.2160 Sector 3 Kurukshetra lodged the FIR.

4. It is pleaded that Jai Singh aged 44 years was a junior engineer in Haryana State Co-operative Apex Bank Ltd Sector 17, Chandigarh and was drawing monthly salary of Rs12,350/- approximately. It is further pleaded that claimants incurred expenditure of Rs.20,000/- on transportation of dead body and on his last rites. The deceased was having bright future prospectus of promotion in his service career and his salary at the time of his retirement was bound to be more than Rs.25,000/- per month.

5. Another claim petition was directed by Smt. Shanti Devi and another in respect of death of Zile Singh Chahal pleading the same facts. That claim petition was partly accepted and a sum of Rs.5,04,000/- was granted to the claimants.

6. Respondent No.1 filed separate written statement taking preliminary objection of non-joinder of necessary parties that Insurance company with which the Maruti Car bearing registration No.HR-12C/7534 has not been impleaded as party. The driver of the Maruti car was not holding any valid driving licence. On merits, it is pleaded that on 31.1.2000 Ram Lal respondent No.1 was driver of bus bearing registration No.HR-37/7036, being driven from Kalka to Delhi. Maruti Car was being driven

rashly and negligently and without observing traffic rules at a very high speed and accident has occurred on that account as driver of maruti car could not control the vehicle.

7. Respondent No.2 has filed the written statement on the same lines.

8. Respondent No.4 Insurance Company has taken the preliminary objections that claim petitions are incomplete, vague and do not disclose any cause of action against the answering respondent. The driver of offending vehicle was not holding a valid driving licence and as such Insurance Company was not liable.

9. No rejoinder was filed. Following issues were framed :-

1. Whether present accident is the outcome of rash and negligent driving of respondent No.1 Ram Lal while driving bus bearing No.HR-37/7036 on 31.1.2000 around 1.35pm near Sector 2 turning at Pipli, in which Jai Singh and Zile Singh died ?OPP
2. If issue No.1 is proved in affirmative, to what amount and from whom the petitioners are entitled to recover?
OPP
3. Whether respondent No.1 was holding a valid driving licence on the date of accident ?
4. Relief.

10. Learned Tribunal returned finding on issue No.1 in favour of the claimants whereas on issue No.3 it was held that respondent No.4 is not liable to pay the amount and as such issue No.3 was decided accordingly.

11. Feeling dissatisfied with the Award dated 13.05.2014 State of Haryana has directed FAO No.2397 of 2001 and FAO No.2398 of 2001 with a prayer for absolving the State of Haryana to pay the amount and

holding that Insurance Company is liable to pay the amount

12. However, Smt.Shanti Devi and others claimants preferred Cross Objections No.35-CII of 2002 in FAO No.2398 of 2001 for enhancement of compensation.

13. I have heard leaned counsel for the parties and have gone through the records of the case with their able assistance.

14. The first controversy requires to be resolved in the present lis is whether the finding of the Tribunal that Insurance Company is not liable stands the test of legal scrutiny. The answer to that question is in negative. It is settled law that Insurance Company can avoid the liability only in case it is able to prove the driving licence was fake and frivolous and that the owner has not exercised reasonable care. In this case the appellants are the State of Haryana and Haryana Roadways, Chandigarh. In normal practice, the State Government gives employment to the driver after satisfying that person/driver is holding a valid driving licence. The Tribunal, in the present case has given much importance to the statement of driver to the effect that he is 34 years of age. On the basis of calculation, the Tribunal reached to the conclusion that driver of the offending vehicle was 17 years of age at the time of incident and as such license could not be issued to him. No date of birth certificate has been produced on the record. The onus lies heavily upon the Insurance Company to prove that driving license of the driver of offending vehicle was fake. The insurance company has not summoned any record from the licensing authority from where Mark A driving license was issued. The driver of the offending vehicle has stated that previously he was working in Debrugarh Assam and as such under these circumstances, the issuance of driving by the said licensing authority

cannot be said to be suspicious. Learned Tribunal in its impugned Award has mentioned that in licence Mark A there is no endorsement that licence is valid for plying passenger motor vehicle. Said findings are the result of misreading the evidence. From the perusal of Mark A, it is revealed that driving license for heavy passengers Motor Vehicles has been tick marked. The said license has been renewed number of times. So, the appellants could not visualize that said license was a forged one. The Full Bench authority of this Court in **National Insurance Co. Ltd. vs. Parveen Kumar and others reported in 2005 (1) RCR(Civil) page 485** held that where driver did not possess requisite licence of motor cycle but was driving tempo, Insurance Company is liable to pay compensation if the driving method and mechanism of both the vehicles for which licence was obtained and the one which was being driven, was the same. So, in these circumstances, the finding of Tribunal to the effect that Ram Lal driver respondent No.1 was not holding valid driving license at the time of accident stands reversed and stands answered against the National Insurance Company. The consequence of reversal of finding on the said issue is that Insurance Company is jointly liable to pay the awarded amount in both the cases and as such both appeals stand accepted by holding that Insurance Company is held jointly and severally liable along with the appellant. Appellants have submitted that amount of compensation awarded by Tribunal in both the cases have been paid. So, the appellants are held entitled to indemnify by the Insurance Company.

15. The claimants Shanti Devi and others have filed cross-

objections for enhancement of compensation. Zile Singh deceased predecessor-in-interest of Shanti Devi has died at the age of 54 as per the finding of the Tribunal. The monthly dependency of Zile Singh has been taken as Rs.6000/- per month and multiplier of 7 has been applied. The amount of compensation calculated was Rs.5,04,000/- (Rs.6000x12x7).

16. Learned counsel for the cross-objectors has submitted that income of Zile Singh as per return, according to document Ex.PW-4/C was Rs.1,81,460/- per annum. It is submitted that claimants are two in number. 1/3rd amount can be deducted in respect of personal expenses. The future prospectus has also not been taken into account in view of authority **Rajesh and others vs Rajbir Singh and others reported in 2013 (3) RCR (Civil) page 170.** The multiplier applicable at the age of 54 as per **Smt. Sarla Verma and others' (supra)**, is 11. It is further submitted that no amount in respect of loss of consortium and loss of love and affection has been allowed. It is further submitted that no amount in respect of expenses on last rites and transportation has been allowed. So, the said amount be also allowed in view of authority **Rajesh and others' (supra)**. The Tribunal has not taken into account the income keeping in view the salary certificate.

17. Counsel for the Insurance Company as well as State counsel have supported the award passed by the Tribunal. The gross salary has been shown as Rs.17,813/- per month as is evident from salary certificate Ex.PW4/C whereas the income tax has been deducted to the extent of Rs.3000/-. However, in return annexed to this document, the income of the deceased for the year 1999-2000 has been shown as Rs.1,89,015/-. Out of

the said amount the income tax payable has been shown as Rs.11,802/-. So, the gross income after deducting income tax comes to Rs.1,17,713/-. The claimants are two in number. So, 1/3rd amount has to be deducted in respect of personal expenses. So, the amount of yearly dependency comes to Rs.1,18,142/- per year.

17. Learned counsel for the appellants has submitted that the future prospectus to the extent of 15% be taken into account in view of authority **Rajesh and others' (supra)**. However, case of the appellants is covered by authority **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Anr 2009 (3) R.C.R.(Civil) 77**, relied upon by the learned counsel for the appellants. In the said authority it has been held that future prospectus has to be considered only upto the age of 50 years. So, no amount for future prospectus can be given on the facts of the present case. The multiplier at the age of 54, according to **Smt. Sarla Verma and others' (supra)**, is 11. So, by applying the said multiplier the amount of compensation comes to Rs.12,99,562/-.

18. The cross-objectors-claimants are also held entitled to claim amount in respect of expenses on last rites, transportation of dead body, loss of consortium and loss of love and affection keeping in view of price index of the year 2000. So, a sum of Rs.15,000/- stands allowed in respect of expenses on last rites and transportation etc. Another sum of Rs.35,000/- stands allowed in respect of loss of consortium and sum of Rs.35,000/- stands allowed on account of love and affection.

19. So, in this manner the cross-objectors-claimants are held

entitled to claim Rs.13,84,562/- in all which shall carry interest @ 7½% per annum from the date of claim petition before the Tribunal till the date of realization.

20. In the manner indicated above, the present cross-objections stand disposed of accordingly.

21. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

May 06 , 2015
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