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

**1. FAO No.5186 of 2002 (O&M)
Date of Decision: May 14, 2015**

M/s Indian Acrylics Ltd. .. Appellant

vs.

Inderjit Kaur and others .. Respondents

**2. FAO No.5605 of 2002 (O&M)
Date of Decision: May 14, 2015**

Inderjit Kaur and others .. Appellants

vs.

**The Oriental Insurance Company Limited and another
.. Respondents**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Nimrata Shergill, Advocate for the appellant in FAO No.5186 of 2002 and for respondent No.2 in FAO No.5605 of 2002.

Mr. Ashok Jindal, Advocate for the appellants in FAO No.5605 of 2002 and for respondent Nos.1 to 4 in FAO No.5186 of 2002.

Mr. Naveen Kapoor, Advocate for respondent No.5 in FAO No.5186 of 2002 and for respondent No.1 in FAO No.5605 of 2002.

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

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Kuldip Singh J.

This order of mine will dispose of two appeals i.e. FAO Nos.5186 2002 filed by the owner and FAO No.5605 of 2002 filed by the claimants.

The original files of the aforesaid appeals have been burnt in the unfortunate fire incident, which occurred in this Court in the year 2011.

Brief facts of the case are that on 19.12.2000 at about 7.30 p.m., Devinder Singh Attri (now deceased), Advocate practicing in Civil Courts, Malerkotla and Dhuri was going on foot to his house located in street No.9, Punia Colony, Sangrur. When he reached near the clinic of Dr. Lal, a D.C.M. Toyota bearing registration No.CH-01-9568 being driven by Darshan Singh-driver came rashly and negligently without observing traffic rules and hit Devinder Singh Attri and dragged him upto distance of 20 yards. Devinder Singh Attri died at the spot. A criminal case in this regard was registered.

The Tribunal after scanning the evidence, came to the conclusion that there is no evidence to the effect that Devinder Singh Attri was attending the court nor he has filed or defended any case in any court. It was also found that he was not submitting income tax return. Therefore, his annual income was taken to be ₹59,000/-. 1/3rd of the income was deducted as personal expenses. Thus, dependancy of claimants came to ₹3,300/- per month. After applying the multiplier of 8, the total amount of compensation was calculated to ₹3,16,800/- (rupees three lac sixteen thousand eight hundred only). No compensation under any other head was awarded.

Since, the licence of the driver Darshan Singh was found to be fake, therefore, the Insurance Company was also granted recovery rights against the insured.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the owner has argued that in this case, the owner of the offending vehicle was required to satisfy himself about the driving licence and even if it is found to be fake, he cannot be saddled with liability.

In this regard, reliance has been placed upon the authority of Hon'ble the Supreme Court in case of ***"Pepsu Road Transport Corporation vs National Insurance Company", 2013 (10) SCC 217.***

I am of the view that such plea cannot not be raised at this stage.

A perusal of the Award shows that no such plea was raised in pleadings that the owner was satisfied that it was genuine licence. Nor the owner had appeared in the witness box to make such claim and submitted himself for cross-examination. Therefore, such plea cannot be raised at this stage.

Moreover, the copy of the driving licnece shows that the same was issued from Guwahati whereas Darshan Singh, Driver of the offending vehicle belong to village Kasba Bharal, Tehsil Malerkotla. If a person belonging to Malerkotla Tehsil produces a driving licence issued by Guwahati, there can be prima facie reason to suspect that there is something wrong with the licence, as Darshan Singh, Driver never claimed to have resided at Guwahati. Therefore, the plea of the owner is found to be without any force.

Thus, **FAO No.5186 of 2002** filed by the owner of the offending vehicle stands dismissed.

In the appeal filed by the claimants, it comes out that the deceased left behind his wife two daughters, (one of whom is minor) and one minor son. In this way, there were four dependents of the deceased. There is no presumption that if income tax return is not filed, the income of the deceased was below the taxable limits. The deceased was a law graduate and he was supporting the family of four members. It must be assumed that he was having some respectable income to maintain himself in the society. The legal practice is not only work a law graduate can do. He could also do some other work (i.e. Oath Commissioner or Notary Public) regarding which no discussion has been made in the Award. He could also work as consultant. So, a law graduate can work in other fields as well to earn extra income.

I am of the view that the income of the deceased could not be less than ₹7,500/- per month. As held by the Hon'ble Apex Court in case of ***"Rajesh and others vs Rajbir Singh and others", 2013(9) SCC 54***, where the age of the victim is 50-60, addition of 15% is to be added on account of future prospects. In this case, the deceased was 55 years of the age. Therefore, 15% of the income i.e. ₹1,125/- is to be added on account of future prospects. Thus, the income of the deceased comes to ₹8,625/- per month. Out of which, $1/4^{th}$ i.e. ₹2,156/- is deducted as personal expenses as the number of dependents is four. Thus, the dependancy of the claimants comes to ₹6,469/- per month.

Keeping in view the age of the deceased as 55 years, multiplier of 11 is to be applied. Therefore, the dependancy of the claimants comes to ₹8,53,908/- (₹ 6469x11x12).

In this case, nothing has been awarded on account of loss of consortium to the wife, love and affection and future guidance to the children as well as funeral expenses.

In view of the ruling of Rajesh's case (supra), ₹1,00,000/- on account of loss of consortium to the wife and another ₹1,00,000/- on account of loss of love and affection and future guidance to the children are allowed. ₹25,000/- are also allowed on account of funeral expenses. Thus, the total amount of compensation comes to ₹10,78,908/- (rupees ten lac seventy eight thousand nine hundred eight only). The enhanced amount of compensation shall be paid with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. The Insurance Company shall be liable to pay the compensation. The amount of compensation shall be paid and distributed in terms of the Award passed by the Tribunal.

Accordingly, **FAO No.5605 of 2002** filed by the claimants is allowed to the aforesaid extent.

(KULDIP SINGH)
JUDGE

May 14, 2015
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