

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

FAO No.2353 of 2006 (O&M)

Date of decision: 07.12.2015

Barkha Singh and others

.....Appellants

Versus

Virinder Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Nitin Mittal, Advocate,
for Mr. Lalit Garg, Advocate,
for the appellants.

Mr. S.S. Dhaliwal, Advocate,
for Mr. Kulbir Sekhon, Advocate,
for respondent No.2.

Mr. L.M. Suri, Senior Advocate,
with Ms. Rajni Paul, Advocate,
for respondent No.3-Insurance Company.

Ritu Bahri, J.

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') vide award dated 12.11.2005 on account of death of Swaran Kaur in a vehicular accident, which took place on 13.09.2002. Appellant No.1 is husband and appellant Nos. 2 to 4 are children of deceased-Swaran Kaur.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 13.09.2002, Swaran Kaur (deceased) was going along with her husband Barkha Singh-appellant No.1 from Zirakpur to village Dayalpura on a bicycle. Barkha Singh was riding the cycle, whereas the deceased was a pillion rider. At about 7.30 p.m,

when they reached near Lohgarh Chowk on Zirakpur-Rajpura road, in the

meantime, a truck bearing registration No. PB-12-D-9537, being driven by respondent No.1-Virinder Singh in a rash and negligent manner, came from behind and hit their cycle, as a result of which, both the occupants of cycle fell down along with the cycle. Swaran Kaur was run over under the truck and died at the spot on account of injuries suffered in the accident. With regard to the accident, FIR No.220, under Sections 279/304-A IPC was registered at Police Station, Dera Bassi. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The Tribunal, on the basis of evidence led by the parties, came to a conclusion that the accident had been caused on account of rash and negligent driving of truck bearing registration No. PB-12-D-9537 by driver-respondent No.1-Virinder Singh. This finding is rightly based on the deposition of Barkha Singh, eye witness (AW-1), on whose statement FIR No.220, under Sections 279/304-A IPC was registered. Ultimately, the claim petition was accepted by the The tribunal and a sum of Rs.2,68,800/- was awarded as compensation on account of death of Swaran Kaur. The deceased was a housewife and value of her services as housewife was assessed at Rs.2400/- per month. A sum of Rs.800/- was deducted towards personal expenses of the deceased. Loss of dependency was taken to be Rs.1600/- per month, which came to be Rs.19,200/- per annum. As per the postmortem report, Swaran Kaur (deceased) was 35 years of age at the time of the accident/death and the multiplier of 14 was applied. Thus, the claimants were found entitled to compensation of Rs.2,68,800/-.

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The claimant-appellants are aggrieved with the finding on issue No.2, wherein the plea taken by Insurance Company was accepted by the Tribunal to the effect that the offending truck was not insured by respondent No.3-Insurance Company. The offending truck was belonging to Gurpreet Singh-respondent No.2, who had sold the same to Bhola Singh-respondent No.4 on 04.07.2001 as per possession letter (Ex.R1). The accident had taken place on 13.09.2002. Bhola Singh-respondent No.4 had given a cheque (Ex.R2) towards premium to the Insurance Company-respondent No.3. The said cheque could not be encashed, as it was returned back along with memo of the bank (Ex.R3). Bhola Singh and Damanjit Kaur had only Rs.504/- in their account and the premium of the insurance policy was Rs.9687/-. The insurance company, vide letter dated 10.05.2002 (Ex.R4), had informed the original owner-Gurpreet Singh through registered post with regard to dishonouring of the cheque for want of “sufficient funds.” The Insurance Company had duly performed its duty in accordance with law. On the date of the accident i.e. 13.09.2002, there was no valid insurance policy in favour of owner of the offending truck namely Bhola Singh-respondent No.4. Thus, the offending truck was not insured and the insurance company-respondent No.3 was not to make any payment of compensation.

The Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Seema Malhotra, 2001 (1) PLR 826, had set aside a judgment of the High Court. In that case, a cheque issued towards premium had been dishonoured

after the death of the insured. The Hon'ble Supreme Court held that when the insured had failed to pay the premium promised and when the cheque issued by him was returned dishonoured, the insurer need not to perform its part of promise and no claim can be made for performance in that case from the insurance company. In case, the compensation had been disbursed before the cheque was dishonoured, the insurer had a right to recover the same from the insured. However, if the insured makes up the premium even after the cheque was dishonoured, but before the date of accident, the payment would be treated in order. In case, after dishonouring of the cheque, the accident takes place and the insurance policy is cancelled, then the insurance company cannot be held liable to pay compensation by deducting the amount of premium. In para No.9 of the Judgment, the Hon'ble Supreme Court has held as under:-

“9. A three-Judge Bench in ***Oriental Insurance Co. Ltd. v. Inderjit Kaur, 1998 (1) SCC 371*** left this point unconsidered. In that case also the premium was paid by cheque which was later dishonoured and the insured was intimated about it by the insurance company two months after the vehicle got involved in the accident. When a claim was made by the legal heirs of the driver who died in the accident, the Insurance Company resisted the claim on the strength of Section 64-VB of the Insurance Act of 1938. Repelling the contention of the Insurance Company, the three-Judge Bench held thus:-

“We have, therefore, this position. Despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium thereof. By reason of the provisions of Section 147 (5) and 149 (1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to void or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.”

In Deddappa & Ors. Vs. The Branch Manager, National Insurance Co. Ltd., 2008 (1) RCR (Civil) 402, the Hon'ble Supreme Court has held that validity of a contract is based on reciprocal promise. While making reference to Sections 147 and 149 of Motor Vehicles Act, 1988 and Section 64-VB of Insurance Act, 1938, it was further observed as under:-

“13. Section 147 of the Act obligates the owner of the motor vehicle to get the vehicle insured in so far as the claim of third party is concerned. The Act does not deal with contract of insurance as such. Contract of insurance is governed by the Insurance Act, 1938 (for short “the 1938 Act”)

14. Section 64-VB of the 1938 Act provides that no risk is to be assumed unless premium is received in advance in the following terms:-

“Section 64VB- No risk to be assumed unless premium is received in advance-

(1) No insurer shall assume any risk in India in respect of any Insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.- Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch

by post to the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

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26. We are not oblivious of the distinction between the statutory liability of the Insurance Company *vis-a-vis* a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.”

In the present case, after the cheque was dishonoured, the requisite information had been sent by the Insurance Company vide letter dated 10.05.2002 (Ex.R4) to Gurpreet Singh. The argument of learned counsel for the appellants that no letter was sent to Bhola Singh, who had subsequently purchased the vehicle as per letter (Ex.R1), will not be of much help to the claimants-appellants, as the memo of bank (Ex.R3) shows that there was only an amount of Rs.504/- in the account of Bhola Singh and Damanjit Kaur on the relevant date, whereas the premium amount was Rs.9687/-. Hence, the cheque was dishonoured on account of “insufficient funds” in the account. The insurance policy had been issued in the name of Gurpreet Singh much before the vehicle was sold to Bhola Singh. Hence, the letters Ex.R4 and Ex.R7 were rightly issued to him by the Insurance Company. Once, the premium had not been paid, the vehicle cannot be assumed to be insured and the insurance company had been rightly absolved of making any payment of compensation.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. A Division Bench of this Court in **Paramjit Singh and another Vs. Dilbagh Singh alias Bagga**

while calculating the notional income of a housewife, the entire income should be taken as dependency of the legal heirs without applying any cut, much less 1/3rd. In this judgment, the view taken by learned Single Judge of this Court in **Dayal Singh and others Vs. Hardip Singh and others**, FAO No.832 of 1986 (decided on 11.11.2008), was upheld.

Applying the above said principle to the facts of the present case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of **Asha Verman and others vs. Maharaj Singh and others**, 2015(2) RCR (Civil) 520, **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77 and **Munna Lal Jain and another vs. Vipin Kumar Sharma and others**, 2015(3) Recent Apex Judgments 459. Accordingly, the compensation is re-assessed as under:-

SR. No.	HEADS	CALCULATION
(i)	Income/value of the services of deceased as housewife.	Rs.3000/- per month
(ii)	Compensation after multiplier of 14 is applied	Rs.3000 x 12 x 14 = Rs.5,04,000/-
(iv)	Loss of consortium to appellant No.1-husband	Rs.1,00,000/-
(v)	Overhead compensation including funeral charges as the accident took place in the year 2002.	Rs.1,25,000/-
(xii)	TOTAL COMPENSATION AWARDED	Rs.7,29,000/-
	Enhanced amount of compensation	Rs.7,29,000 – 2,68,800 = Rs.4,60,200/-

The enhanced amount of compensation of **Rs.4,60,200/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its

realization, in view of the judgment of Hon'ble the Supreme Court in the

case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others**, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

07.12.2015
ajp

(RITU BAHRI)
JUDGE