

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O. No. 5790 of 2011

Date of decision : January 19, 2015

Bajaj Allianz General Insurance Company Ltd.

....Appellant

versus

Raman Sharma and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Ms Vandana Malhotra, Advocate, for the appellant
Mr. Amit Dhawan, Advocate, for respondent nos. 1 to 3
None for respondents no. 4 & 5

Fateh Deep Singh, J. (Oral)

The insured has assailed award dated 20.5.2011 passed by learned Motor Accident Claims Tribunal, Jalandhar. The factual aspects are that it was on 3.6.2009 deceased Ashok Kumar, a Junior Engineer with Punjab State Electricity Board aged around 46 years met his nemesis when going on his motorcycle make Bajaj bearing No. PB-08-AU-6582 and in the area of Doaba Chowk of Kanya Maha Vidyalaya College, offending motorcycle bearing No. PB-08-BG-3559 owned by Sohan Singh respondent no. 2 came being driven rashly and negligently by Harinder Singh insured

by Insurance Company-respondent no. 3 which hit the ill fated motorcycle resulting in accidental injuries and death. The findings on issue no. 1 that this death was on account of rash and negligent driving of the offending vehicle has not been put to question and thus, this finding has attained finality.

Heard Ms Vandana Malhotra, Advocate, for the appellant and Mr. Amit Dhawan, Advocate, for respondent nos. 1 to 3 and perused the records.

First contention is over the quantum of compensation. The learned Tribunal has appreciated the evidence and proven fact that the deceased was a Junior Engineer with Punjab State Electricity Board and was aged around 46 years and drawing salary of Rs 27,371/- brought about PW3 Balwinder Singh Rana, Establishment Clerk by way of salary certificate and income tax return Ex. P6. Rather the learned Tribunal has deducted 1/3rd of this earnings as expenses which the deceased must be incurring on his own upkeepment and which is certainly on the higher side keeping in view the number of dependents. However, the same has not been challenged by the claimants. Nothing can be found fault with as to the application of the multiplier of 13 which is appropriate in view of law laid down *Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (6) SCC 121.* The learned Tribunal has also granted

compensation under the conventional heads though not commensurate with and therefore, the total amount of compensation computed by the Tribunal is Rs 36,42,700/- certainly cannot in any manner shown by the counsel for the appellant to be not commensurate with the evidence or not fair and reasonable and therefore, this argument of the counsel for the appellant needs to be brushed aside.

The second leg of submissions revolves around the driving licence of Harinder Singh respondent no.1 who is alleged to be the person driving the offending motorcycle at the time of accident. The learned Tribunal has erred on issue no. 2 and as has been highlighted in the arguments of the two sides. The learned Tribunal while considering evidence on this issue has taken note of the testimonies of RW2 Tarsem Singh, Clerk, Office of the District Transport Officer, Jalandhar who has proved on the basis of entry No. 14156 for the period from 27.7.2007 to 4.10.2007 and has testified that the driving licence against this entry has been issued in the name of Sohan Singh son of Tehal Singh. The very particulars of the driver and the owner reflects that the driver happens to be son of the owner. The witness in no uncertain terms has stated that he has scrutinized entries during the relevant period and did not come across issuance of any driving licence in the name of Harinder Singh son of Sohan Singh and thus as per their record licence at entry No. 14156 dated

30.1.2008 has never been issued in the name of Harinder Singh son of Sohan Singh and has termed it to be a fake one and which evidence has not been rebutted by any means not even by the driver or the owner and the findings arrived at by the learned Tribunal that the driving licence was not valid driving licence and rather was fake one needs to be upheld and it is clarified that due to some ambiguity that has been crept up in the findings on issue no. 1 and in view of the law laid down in *New India Assurance Company Limited versus Kamla and others, 2001 (1) PLR 830 (SC)* that the driver, the owner and the insurer shall be jointly and severally liable to pay the compensation amount and in view of the fake-ness of the driving licence, the insurer shall have recovery rights to recover the entire compensation from owner and the driver of the motorcycle jointly and severally.

In the light of the foregoing discussions, the instant appeal stands disposed of accordingly in the aforesaid terms.

January 19, 2015

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**(Fateh Deep Singh)
Judge**