IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 23.4.2015

FAO No. 6865 of 2011 (O/M)
ICICI Lombard General Insurance Company Limited ..... Appellant

Versus

Reema Devi and others ...... Respondents

CM No. 10687-CII of 2012 in/and
FAO No. 2445 of 2012 (O/M)
Reema Devi and others ..... Appellants

Versus

Hawa Singh and others ...... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Nitin Mittal, Advocate, for,
Mr. Subhash Goyal, Advocate, for the appellant
in FAO No. 6865 of 2011 and
for respondent No. 3 in FAO No. 2445 of 2012.

Mr. Ravi Gakhar, Advocate, for,
Mr. Jagdish Manchanda, Advocate, for the appellants
in FAO No. 2445 of 2012.

Mr. Mohamad Shameen, Advocate, for,
Mr. Sandeep Modgil, Advocate, for respondents No. 7
and 8 in FAO No. 6865 of 2011 and
for respondents No. 1 and 2 in FAO No. 2445 of 2012.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)
FAO No. 6865 of 2011

This order of mine will dispose of FAO No. 6865 of 2011 titled as *ICICI Lombard General Insurance Company Ltd. Versus*

Reema Devi and others and FAO No. 2445 of 2012 titled as *Reema Devi and others Veresus Hawa Singh and others.* FAO No. 6865 of 2011 has been filed by the insurance company, whereas FAO No. 2445 of 2012 has been filed by the claimants against the award dated 8.8.2011, passed by the Motor Accident Claims Tribunal, Karnal, (in short 'the Tribunal').

In this case, Prem Kumar, aged about 32 years, died in a motor vehicular accident, which occurred on 12.1.2010, at about 8:30 AM, near Canal Bridge, Munak, while the deceased was going alongwith Joginder on Splendor motorcycle bearing registration No. HR-05K-5523. Joginder was pillion rider. The offending vehicle in this case was a tanker bearing registration No. HR-33-B-2799. In the accident, Prem Kumar died and the pillion rider Joginder sustained serious injuries. FIR No. 12 dated 12.1.2010 under Sections 279, 337, 304-A IPC was registered against Hawa Singh (respondent/driver of the offending vehicle). The Tribunal assessed the income of the deceased being an unskilled worker at Rs. 4,348/- per month, as per notification of the State of Haryana. 1/4th was deducted as personal expenses and the dependency of the claimants was treated as Rs. 3,261/- per month. Multiplier of 16 was applied and the compensation was calculated at Rs. 6,26,112/-. Rs. 20,000/- as funeral expenses were allowed. The total compenation of Rs. 6,46,112/- was allowed alongwith interest 7.5% per annum.

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

Learned counsel for the insurance company has argued that the tanker was a hazardous vehicle and there was no endorsement on the licence for the hazardous vehicle. However, it comes out that during the proceedings, the insurance company itself had produced the verification report (Ex.R3), showing that the respondent/driver was authorized to drive LMV/HTV/HGV. HGV is taken to be 'Hazardous Goods Vehicle'. In Section 10 of the Motor Vehicle Act, 1988, certain categories of licences have been mentioned and HGV is not mentioned as a category. Therefore, I do not find any substance in the contention of the learned counsel for the insurance company that HGV stands for 'Heavy Goods Vehicle'. In the absence of any evidence and keeping in view the fact that there was already endorsement for (HTV) Heavy Transport Vehicle, HGV was rightly considered to be an hazardous goods vehicle and therefore, the offending vehicle is covered under the driving licence.

Learned counsel for the insurance company further states that the licence was issued by Nagaland Authority and not by the authority where driver/respondent was residing.

In this case, respondent/driver had not led any evidence nor any question was asked to any witness of the claimants as to where the deceased was residing at the time of issuance of licence. Therefore, at this stage, it cannot be presumed that the licence was issued by an incompetent authority and is liable to be ignored. No other contention has been raised by the learned counsel for the insurance company. Therefore, I do not find any substance in the appeal i.e. FAO No. 6865 of 2011, filed by the insurance company and the same is liable to be dismissed.

Now, coming to the appeal of the claimants, it comes out that in this case, addition of future prospects in the income of the deceased was not made nor any compensation for loss of consortium to the widow and on account of loss of love and affection to the minor children and parents was granted and funeral expenses should have been allowed at Rs. 25,000/- as per the authority of the Hon'ble Supreme Court in *Sarla Verma Versus Delhi Transport Corporation,* 2009 (3) RCR (Civil) 77, in place of Rs. 20,000/-.

Keeping in view the facts of the case, 50% addition in the income of the deceased is made on account of future prospects, which comes to Rs. 6,522/-. 1/4th is deducted as personal expenses. The dependency of the claimants comes to Rs. 4,892/- per month. Therefore, the amount of compensation comes to Rs. 4,892x12x16=Rs. 9,39,264/- Rs. 1,00,000/- on account of loss of consortium to widow, Rs. 1,00,000/- on account of loss of love and affection to the minor children and another Rs. 50,000/- on account of loss of love and affection to the parents (to be equally shared) are allowed. In place of Rs. 20,000/- as funeral expenses awarded by the Tribunal, Rs. 25,000/- are allowed. Thus, the total amount of compensation comes to Rs. 12,14,264/-. The increased compensation shall be paid with interest @ 7.5% per annum from the date of filing claim petition till its realization. The insurance company shall be liable to pay the amount of compensation being the insured of the offending vehicle. Out of the compensation, Rs. 50,000/- each are allowed to the father and mother/claimant Nos. 4 and 5. Out of the remaining amount, 50% shall go to the widow of the deceased Reema Devi/claimant No. 1, who is to run day-to-day affairs of the family and meet the family responsibilities after the death of her husband. Remaining 50% of the compensation amount shall go to the minor children of the deceased (to be equally shared). The shares of the minor children shall be invested in long term FDR with the nationalized bank of the choice of their mother after recording their date of birth in the FDR and on becoming major, the amount shall be disbursed to them without any further order from the Court. The amount of compensation shall be directly disbursed by depositing the same in the bank accounts of the widow/parents/minor children of the deceased, to be furnished before the insurance company or the Tribunal, as the case may be.

Accordingly, appeal filed by the claimants i.e. FAO No. 2445 of 2012 is allowed and that of the insurance company i.e. FAO No. 6865 of 2011 is dismissed.

(KULDIP SINGH)
JUDGE

23.4.2015
sjks