IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4955 of 2012 (O&M)
Date of decision 09 .03. 2015.

ICICI Lombard General Insurance Co.
...... Appellants.

versus

Usha Rani 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 Rajbir Singh, Advocate for the appellant.
Shri Sushil Gautham, DAG, Haryana

K.C.PURI, J.

Challenge in this appeal is the Award dated 05.06.2012 passed by Ms. Navjot Sohal, Motor Accident Claims Tribunal, Patiala vide which claim petition preferred by the claimants was allowed with costs and the claimants were awarded compensation of Rs.9,28,000+Rs.10,000/- (on account of loss of consortium) to which claimant No.1 Usha Rani being widow of the deceased is entitled along with interest @ 9% p.a., from the date of filing the claim petition till actual realization of the awarded amount. Devki Devi claimant No.5 was allowed 1/3rd share of the compensation amount whereas claimant Nos.1 to 4 were held entitled to the remaining 2/3rd share of the compensation amount in equal shares. The respondents were held liable jointly and severely to pay the compensation amount.

2. Claimants have preferred petition under Section 166 of Motor Vehicles Act (in short - the Act)

3. Briefly the case of the claimants is that on 07.08.2010 at about 9a.m., when they reached near Polytechnic College, near SST Nagar, Patiala and were about to cross the traffic lights in the process of aheading towards truck Union, Hardev Dass was ahead of Dharam Chand, was hit by Haryana Roadways Bus bearing registration No. HR-37B-5007 (hereinafter referred as offending vehicle) which came from Rajpura side being driven rashly and negligently by its driver respondent No.1 and struck against the bicycle of Hardev Dass, who was going ahead to Dharamchand. The bicycle of Hardev Dass entangled in the bumper of the bus towards the left side and the driver of the bus dragged Hardev Dass along with the bicycle by 30-35 yards towards Patiala side. An alarm was raised by Dharama Chand. The bus was stopped. FIR was lodged by Dharam Chand with the police of Police Station Kotwali, Patiala. Hardev Dass died and his post mortem examination was conducted. The claimants were totally dependent upon the income of deceased. Due to untimely death of Hardev Dass, claimant No.1 has lost her life partner at a tender age, claimants No.2 to 4 lost their father and claimants No.5 and 6 have lost their son. In this way, they claimed a compensation of Rs.30,00,000/- against the

respondents.

4. Notice of the claim petition was given to the respondents. Respondent No.2 General Manager of Haryana Roadways, Ambala filed written statement denying the factum of accident as well as liability of their driver. They claimed that the bus was insured with ICICI Lombard-the Insurer at the relevant time of the accident. If the claimants succeed in proving the liability of the driver, the insurer company is under obligation to indemnify the insurer.

5. The driver of the bus while admitting the factum of accident, alleged that the deceased himself was responsible for the accident. The bus was stopped at the crossing near the truck union, Patiala on account of the red signal at the traffic lights. As soon as the green signal was given, the driver started the bus. The speed of the bus was not more than 10kmph. The deceased came from the side of SST Nagar, Patiala and without taking note of the red traffic lights tried to pass his cycle and in that process, he struck against the bus. The cycle gone underneath the bus and the head of the deceased struck against the body of the bus. On noticing the alarm, the bus was stopped. The people took out the deceased underneath the bus and he was found dead. The labourer present at the spot told him that the deceased was addicted to intoxicants and he deliberately did not notice the traffic lights. He denied the allegations made in the claim petition.

6. Respondent-Insurance Company raised the legal objections that the driver of the bus in question did not hold a valid and effective driving

license at the time of alleged accident, respondent No.2, the owner of the bus was not holding valid registration certificate, fitness certificate and route permit at the time of alleged accident. The respondent No.2 being owner of the bus, handed over the bus to the said driver having knowledge that the driver did not hold a valid and effective driving licence to drive the said bus and as such, there is violation of the terms and conditions of the Insurance Policy. The factum of accident was denied and liability of the Insurance Company was also denied.

7. No rejoinder was filed. From the pleadings of the parties, following issues were framed :-

1. Whether deceased Hardev Dass died in a motor vehicle accident caused by respondent No.1 rashly and negligently on 07.08.2010, as alleged ? OPP

2. Whether claimants are entitled to the compensation as prayed for, if so from whom ? OPP

3. Whether respondent No.1 was not holding a valid driving licence at the time of alleged accident, if so, its effect ? OPR

4. Relief.

8. The Tribunal, after assessing the testimony of the witnesses partly accepted the claim petition and allowed as aforesaid.

9. Feeling dissatisfied with the above said Award, the Insurance Company has directed the present appeal.

10. I have heard learned counsel for the parties and have gone through the records of the case.

11. Devki Devi has been stated to be died and her legal representatives have not been brought on record. However, the services of respondents No.6 Bahadur Dass husband of Devki has been dispensed with vide order dated 21.10.2013 and as such the service of legal representatives of respondent No.5 also stands dispensed with.

12. The only point urged by the counsel for the appellant is regarding amount of compensation awarded to the claimants. Counsel for the appellant has submitted that occurrence relates to 7.8.2010 and the income of the deceased has been wrongly taken as Rs.6000/- per month. The income of deceased can be taken as that of unskilled labour which cannot be more than Rs4200/- per month, the minimum wages prevalent in the market at that time. Learned counsel for the appellant has not challenged the remaining part of the award.

13. In this case the deceased was doing the work of denting and painting and his income has been taken as Rs.6000/- per month. The dependency has been calculated by deducting 1/4th in respect of his personal expenses. The multiplier applied in the present case was 17 and in this manner the total amount calculated was Rs54000x17=Rs.9,18,000/-. Another sum of Rs.10,000/- has been allowed as funeral expenses, loss of estate. The said amount cannot be said to be excessive. The amount of income of Rs.6000/- per month cannot be said to be on higher side. Otherwise also, in case the minimum wages are taken, in that case, after taking into account future prospectus in view of authority **Rajesh and others vs. Rajbir Singh and others reported in 2013(3) RCR (Civil)**

page 170, the income would be more than Rs.6000/- per month. So, the amount allowed by the Tribunal cannot be said to be on higher side.

14. Consequently, the appeal preferred by the Insurance Company is without any merit and the same stands dismissed.

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

(K.C.PURI)
JUDGE

March 09 , 2015
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