IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.163 of 2013 (O&M)

United India Insurance Company Limited

...Appellant

Versus

Nawab Kaur and others

...Respondents

(2) FAO No.467 of 2013 (O&M)

Nawab Kaur and others

...Appellants

Versus

Vinod Kumar and others

...Respondents

Date of Decision: April 06, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.V.Ramswaroop, Advocate
for the appellant (in FAO No.163 of 2013) and
for respondent No.4 (in FAO No.467 of 2013).

Mr.R.S.Budhwar, Advocate
for respondents No.1 to 4(in FAO No.163 of 2013) and
for the appellants (in FAO No.467 of 2013).

Mr.Parminder Singh, Advocate
for respondents No.5 to 7 (in FAO No.163 of 2013) and
for respondents No.1 to 3 (in FAO No.467 of 2013).

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INDERJIT SINGH, J.

Both the above-mentioned FAOs are taken up together for disposal being arisen from same Award.

FAO No.163 of 2013 has been filed by United India

Insurance Company Ltd. against Smt.Nawab Kaur and other respondents challenging the impugned Award dated 03.10.2012 passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal') vide which ₹4,84,800/- along with interest @ 7.5% per annum from the date of filing of the petition till realization has been awarded to the claimants.

FAO No.467 of 2013 has been filed by the claimants-appellants for enhancement of the compensation awarded vide Award dated 03.10.2012.

Notice of motion was issued in both the cases and respondents appeared through their respective counsel and contested the cases.

The brief facts of the case are that Smt.Nawab Kaur, Dinesh Kumar, Sandeep and Kishni filed claim petition under Sections 166/140 of the Motor Vehicles Act against Vinod Kumar (driver), M/s Best Food International (P) Ltd. (owner), M/s Best Food International (P) Ltd. through its power of Attorney (Power of Attorney holder) and United India Insurance Company Ltd. (Insurer) of offending bus bearing registration No.HR-45A-4399.

It is the case of the claimants that Nawab Kaur and others are widow, sons and mother of deceased Karambir, who have claimed compensation on account of death of Karambir in a motor vehicular accident took place on 04.02.2011. It is the case of the claimants that Jaiveer, Karambir and Satbir were crossing the road, then suddenly a bus bearing registration No.HR-45A-4399 being driven by its driver

Vinod Kumar in a rash and negligent manner and without observing the traffic rules, came from Indri side and struck against Karambir, due to which he fell down on the road and suffered multiple simple and grievous injuries. He was shifted to Govt. Hospital, Karnal, where the doctor declared him dead. The post mortem was conducted. During investigation, it was revealed that Vinod Kumar was driving the bus in question. Respondents No.2 and 3 (in claim petition) are the owners of the bus and respondent No.4 (Insurance Company) is the insurer of the bus. It is also the case of the claimants that deceased Karambir was aged about 40 years. He was an agriculturist and was having a *dhaba* under the name of Chahal Dhabha and was earning ₹12,000/- per month. ₹30,000/- was spent on the conveyance, funeral and last rites. The deceased was sole bread earner of his family and after the accident, the claimants have suffered great mental pain, agony. Vinod Kumar, Driver, respondents No.2 and 3 (owners) and Insurance Company admitted the factum of accident but pleaded that accident had taken place due to the negligence on the part of deceased himself who was crossing the road without looking to the left and right hand side and Driver of bus was not at fault and a false case has been got registered to grab compensation. Insurance Company in separate written statement also stated the same facts that deceased died on account of his own negligence. It is also stated that the amount claimed is on higher side. It is also stated that insured has violated the provisions of Motor Vehicles Act and the Driver was not holding a valid and effective driving licence to drive the bus and the bus was beign driven in contravention of the terms and conditions of the insurance policy.

Following issues were framed:-

"(1) Whether the accident took place due to sole rash and negligent driving of respondent No.1, as alleged?OPPs

(2) Whether the claim petition is not maintainable in its present form?OPR

(3) Whether the claimants have no locus standi and cause of action to file and maintain the petition?OPR

(4) Whether the petition is bad for misjoinder and nonjoinder of necessary parties?OPR

(5) Whether the claimants have not come to the court with clean hands?OPR

(6) Whether driving licence of respondent no.1 was not valid and effective at the time of accident. If so, its effect?OPR3

(7) Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy as alleged. If so, its effect?OPR3

(8) Whether the claimants are entitled to compensation. If so, how much and from whom?OPP

(9) Relief."

Both the parties produced evidence. Learned Tribunal after appreciating the evidence produced before it, decided issues No.1 to 5 and 8 in favour of claimants and against the respondents and issue No.4 is decided in favour of claimants and respondents No.1 to 3 but against respondent No.4. The Tribunal awarded an amount of ₹4,84,800/- by assessing the income of the deceased as per DC rate @ ₹4,214/- per month and 1/3rd deduction has been made and multiplier of 15 is applied. ₹10,000/- has been given as consortium and ₹5000/- as funeral expenses.

At the time of arguments, learned counsel for the Insurance Company has argued on two grounds that, driver of the offending bus was not holding a valid driving licence and learned Tribunal has wrongly misread the word MTR as MTL. He further argued that compensation has been given on higher side.

On the other hand, learned counsel for the claimants-appellants has argued that deduction has been wrongly applied as 1/3rd instead of 1/4th as held by the Hon'ble Supreme Court in ***Smt.Sarla Verma and Ors. v. DTC & Ors. 2009 (6) SCC 121***, as there are four claimants and further the funeral expenses should be given as ₹25,000/- instead of ₹5000/- and consortium should be given as ₹1 lac instead of ₹10,000/- as per law. He further argued that report produced by the Insurance Company is regarding another driving licence and the Court has correctly given the finding.

I have heard learned counsel for the parties and have gone through the lower Court record.

The Insurance Company has tendered the report pertaining to driving licence No.18262/MTL/07 as Ex.R6. No person has been called from any licencing authority with record. Ex.R3 is the copy of driving licene produced by the Driver, which shows its number as 18262/MTR/07 but report Ex.R6 relates to licence No.18262/MTL/07, which means that the report produced by the Insurance Company is not regarding the driving licence in question.

The perusal of the record shows that report mentions the driving licence as MTL instead of MTR and it has not been misread by the Tribunal. The Tribunal has correctly appreciated the evidence on the record. The claimants have also tendered the report Mark-'X', which was objected to by Insurance Company but later on Insurance Company also got produced the report and tendered the same into the evidence. The report produced by the claimants shows that it was for driving licence No.18262/MTR/07, which was shown to be issued by the Licencing Authority, Mathura.

Keeping in view these facts, I find that there is no cogent evidence on record to prove that driver of the offending bus was not having valid and effective licence. Findings of the Tribunal are correct and as per law.

As regarding the argument of learned counsel for the Insurance Company that excess amount has been given, has also no merit. Rather, the Tribunal has taken the income of the deceased as per DC rate, which in no way, can be held as excessive. Therefore, finding no merit in the appeal filed by the Insurance Company i.e. FAO No.163 of 2013, the same is dismissed.

As regarding the appeal filed by the claimants i.e. FAO No.467 of 2013 for enhancement of compensation, I find that there are four claimants in this appeal. Therefore, as per ***Smt.Sarla Verma's case (supra)***, 1/4th deduction should have been made instead of 1/3rd. By taking same income as assessed by the Tribunal and after making deduction @ 1/4th, the total compensation would come to ₹5,70,000/-. As per the settled law, funeral expenses should have been given as ₹25,000/- and not ₹5000/-. Therefore, the funeral expenses are increased from ₹5000/- to ₹25,000/-. Similarly, on the same ground, consortium @ ₹1 lac should have been given instead of ₹10,000/- as has been held by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***, in which it is held that at least ₹25,000/- should be given as funeral expenses and ₹1 lac as consortium.

So, keeping in view the above discussion, the amount awarded vide impugned Award dated 03.12.2012 is increased from ₹4,84,800/- to ₹6,95,000/-. The claimants are further entitled to the same interest as awarded by the Tribunal.

Therefore, the appeal filed by the claimants-appellants i.e. FAO No.467 of 2013 is allowed accordingly.

April 06, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**