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1)	FAO No. 3859 of 2014 (O&M)	
Khushwinder Singh and another		Appellants
	Versus	
Ram Chander and another		Respondents
2)	FAO No. 4243 of 2014 (O&M)	
Ram Chander		Appellants
	Versus	
HC Devinder Singh and others		Respondents

Date of Decision:- 27.07.2015

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Ashwani Arora, Advocate
for the appellants in 1st case and
for respondent Nos.1 and 2 in 2nd case.

Mr. Nikhil Batta, Advocate
for respondent No.1 in 1st case and
for appellant in 2nd case.

Mr. R.S. Dhull, Advocate
for respondent No.2 in 1st case and
for respondent No.3 in 2nd case-Insurance Company.

SHEKHER DHAWAN, J.

These two separate appeals were filed against Award dated 29.08.2013, passed by Motor Accident Claims Tribunal, Patiala (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' awarded compensation of ₹6,97,000/- on account of death of Surinder Kumar @ Lalban.

2. Learned counsel for appellants in 1st case took the plea that 'The Tribunal' has returned the findings that Insurance Company is entitled to recover the amount from driver and owner, as driver was under the influence of liquor at the time of accident. However, as per report RW-3/A i.e. medical examination report, the driver had consumed liquor but he was not under the influence of liquor. 'The Tribunal' fell in error while returning the findings that accident had taken place because of the fact that driver had consumed liquor although he was not under the influence of liquor.

3. Learned counsel for appellants in 1st case also took the plea that '**Consumption of liquor**' and '**To be under the influence of liquor**' are two different things. If the deceased had taken liquor but he was not under the influence of liquor, then there cannot be any presumption that the driver of the vehicle was rash and negligent at the time of accident. Such findings could not be returned by 'The Tribunal'. On this point, reliance was placed upon judgment from Hon'ble Supreme Court in case **Jiju Kuruvila and others** vs. **Kunjujamma Mohan and others**, 2013

Legal Eagle (SC) 439, wherein such a law laid down. Hon'ble Supreme Court had taken the view that as per the medical evidence, the deceased was not under the influence of liquor, even he had consumed liquor because the same does not raise presumption that accident had taken place because of negligence on the part of the deceased.

4. While arguing on this point, learned counsel for respondent -Insurance Company took the plea that even the consumption of liquor is violation of provisions of Section 185 of Motor Vehicles Act, 1988 and 'The Tribunal' has rightly returned the finding on this point thereby concluding that rash and negligence was on the part of the deceased and as such Insurance Company was entitled to recover the amount from the owner.

5. Having considered the rival submissions made by learned counsel for the parties, this Court is of the considered view that the facts are not disputed that Devinder Singh, driver of Scorpio car bearing registration No.PB-13-Q-4704, had consumed liquor on the date of accident. He was medico legally examined at the instance of police from Community Health Centre, Model Town, Patiala and the copy of report of medical officer Ex.RW-3/A on the record. The medical officer had opined as under: -

“xxxx..... Patient has consumed the alcohol but not under the effect of alcohol.”

6. That way, though Devinder Singh had consumed the liquor but he was not under the influence of liquor and as per the law laid down

by Hon'ble Supreme Court in case Jiju Kuruvila and others vs. Kunjujamma Mohan and others case (supra), there cannot be any presumption under the law that accident was because of rash and negligent driving of respondent No.1 and on that account Insurance Company can be absolved.

7. As regards to provisions of Section 185 of Motor Vehicles Act, 1988, again mere consumption of liquor within permissible limit is not an offence even and Section 185 is being reproduced as under: -

“Driving by a drunken person or by a person under the influence of drugs.—Whoever, while driving, or attempting to drive, a motor vehicle

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or

(b) is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both”

8. 'The Tribunal' fell in error while returning the findings that the offending vehicle was being driven by a person who was under the influence of alcohol is factually incorrect because Devinder Singh was not under the influence of alcohol as per medical report Ex.RW3/A and the findings returned by 'The Tribunal' on this account are liable to be reversed and Insurance Company is not entitled to recover the amount from driver and owner.

9. Resultantly, the appeal filed by driver and owner accepted.

Respondent-Bajaj Allianz Insurance Company is not entitled to recover amount from LR's of Khushwinder Singh and driver-Devinder Singh but the payment of amount of compensation is to be made by Insurance Company itself.

FAO No. 4243 of 2014 (O&M)

Now coming to the point of appeal filed by appellant-Ram Chander, regarding enhancement of compensation, if any.

2. Learned counsel for appellant in 2nd case took the plea that 'The Tribunal' has not awarded just compensation because income of the deceased has been taken to be on lower side. The age of the deceased was 23 years and the multiplier of 18 was to be applied, whereas 'The Tribunal' applied multiplier of 14 only. More so, nothing has been awarded on account of loss of love and affection.

3. I have considered the submissions made by learned counsel for the parties on the point of enhancement of compensation, if any. 'The Tribunal' has taken the income of the deceased to be ₹6,000/- per month and there is no contrary evidence available on record. 1/3rd has rightly been deducted on account of self dependency. However, 'The Tribunal' fell in error while applying multiplier of 14, whereas it should be 18, as the age of deceased was 23 only and the amount of compensation to be reassessed to that extent only. That way, the amount of compensation in the present case comes to $₹48,000 \times 18 = ₹8,64,000/-$.

4. The enhanced amount of compensation i.e. ₹1,82,000/- (₹8,64,000 - ₹6,82,000) shall be payable from the date of claim petition along with interest @ 7.5% per annum from the date of claim petition.

Remaining conditions of disbursal of amount shall remain unaltered.

5. Accordingly, the present appeals are accepted partly.

July 27, 2015
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(SHEKHER DHAWAN)
Judge