IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO No. 5788 of 2015(O&M)

Date of Decision: November 6 , 2015.

New India Assurance Company Ltd. ...... APPELLANT (s)

Versus

Urmila and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.C.Kapoor, Advocate for the appellant.

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

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LISA GILL, J.

New India Assurance Company Limited has preferred instant appeal impugning award dated 19.05.2015 passed by learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as, the 'Tribunal') wherein compensation has been awarded to respondents No.1 to 4 on account of death of Dr. Mohinder Singh Grewal.

Brief facts of the case are that, Dr. Mohinder Singh Grewal (since deceased) was proceeding on his motorcycle bearing No. HR-31A-4984 to his office at GLF Hisar where he was working as Semen Bank Officer (SBO) on 05.12.2011 at about 10.30 a.m. His brother Surender Singh who was proceeding for some work at G.J.U. Hisar on his Wagor-R car No. HR-20R-6237 was travelling behind him. When Dr. Mohinder Singh Grewal reached near Jindal Park, a Tralla TATA-LPS 3516 TC going in the same direction driven in a rash, negligent and careless manner by respondent No.5 Pawan Kumar came at a high speed without adherence to traffic rules. It hit Dr. Mohinder Singh Grewal's motorcycle from back-side due to which he fell down and became unconscious. He was shifted to General Hospital, Hisar by Surender Singh where he passed away on 05.12.2011 itself. FIR No.1109 dated 05.12.2011, under Sections 279/304A IPC was registered against respondent No.5 at Police Station City Hisar.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by claimant-respondents No.1 to 4 i.e., the wife, two sons and mother of the deceased. Compensation to the tune of ₹90 lacs was claimed on account of the death of Dr.Mohinder Singh Grewal who was 57 years old at the time of accident. He was Veterinary Surgeon, serving as Semen Bank Officer in the Animal Husbandry and Dairying Department drawing a salary of ₹94,580/- per month. Claim was resisted by the respondents. Following issues were framed by the learned Tribunal:-

> "1- Whether the accident in question occurred due to rash and negligent driving of the offending vehicle Tralla TATA LPS bearing No. HR-5105 by respondent No.1? OPP
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> 2- Whether the petitioners are entitled to recover the compensation from the respondents, if so, to what extent? OPP
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> 3- Whether the petition of the petitioners is not maintainable in law? OPR
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> 4- Relief."

Learned Tribunal on consideration of the facts and circumstances as well as evidence on record concluded that the accident in which Dr. Mohinder Singh Grewal lost his life was caused due to the rash and negligent driving of the offending vehicle by respondent No.5 – Pawan Kumar. On the basis of evidence on record, monthly salary of the deceased was taken to be ₹65,460/- and annual income as ₹7,85,520/-. There is no dispute regarding age of the deceased being 57 years at the time of accident. No addition was afforded on account of loss of future prospects in view of his age. Deduction of 1/4th was effected and annual dependancy worked out as ₹5,89,140/-. Applying a multiplier of 9 as per the guidelines laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77***, loss of dependancy was calculated as ₹53,02,260/-, rounded off to ₹53,02,000/-. Total sum of ₹55,27,000/- was awarded to the claimants as detailed below:-

Loss of dependancy	:	₹53,02,000/-
Loss of consortium	:	₹1,00,000/-
Loss of love and affection @₹50,000/- to both sons	:	₹1,00,000/-
Funeral expenses	:	₹25,000/-

Appellant – insurance company was held liable by learned Tribunal to indemnify the insured.

Learned counsel for the appellant vehemently argues that Insurance company has to be absolved of liability to pay compensation amount for the reason that driver of the offending vehicle was possessing two driving licences which is in contravention of the provisions of the Motor Vehicles Act which clearly stipulates that no person is entitled to hold two driving licences. In this situation, Insurance company cannot be held liable to pay the compensation.

It is further submitted that quantum of compensation awarded is much higher than what the claimants are entitled to. Sons of the deceased were not dependant as they were 28 and 26 years of age therefore, deduction of 1/4th is not justified. Deduction effected should be 1/3rd.

I have heard learned counsel for the appellant and gone through the file.

Driving licence, Ex.R4 was produced by the respondent No.6 – owner in his evidence. As per the verification report Ex.R8, said driving licence is reflected to be genuine. Learned Tribunal while considering contention of the Insurance company has observed as under:-

> "I do not find any merit in the contention of learned counsel for respondent No.3 that the claim petitions deserve to be dismissed qua the insurance company because driver of the offending vehicles possess two driving licenses Ex.R2 and Ex.R4. Moreover verification report of driving License Ex R8 does not mentioned father's name of Pawan Kumar Respondent no.1 as such license does not match with the respondent no.1.
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> Perusal of record reveals that driving licence Ex.R2 was seized by the police and available on criminal file which is proved by RW1 Suveg, Criminal Ahlmed while another driving license Ex R4 has been exhibited by respondent no.2 in his evidence as RW2 and not by respondent No.1. Respondent no.1 was proceeded ex-parte vide orders dated 05.12.2012. Thus, no benefit can be drawn by learned counsel for the insurance company from the observations of Section 6 of the Motor Vehicles Act to the effect that a person

> cannot hold two driving licenses as both the driving licence has not been placed on record by respondent No.1. The verification report Ex R8 shows that respondent no.1 was authorized to drive the offending vehicle on the date of accident. The insurance company failed to verify another driving license Ex R2 nor any evidence has been led despite giving number of opportunities. Thus respondent no.3 failed to prove that respondent no.1 was not authorized to drive the offending vehicle on the date of accident as such there is no substance in the contentions of learned counsel for respondent no.3."

Contention of learned counsel for the appellant that no opportunity was afforded to the Insurance Company to have verified the second Driving Licence Ex.R2, is devoid of any merit especially in view of the categoric finding of the Tribunal that the Insurance Company failed to verify the said Driving Licence, Ex.R2 and neither was any evidence led by it despite being afforded number of opportunities. Respondent-driver was proceeded against *ex parte* on 05.12.2012. Owner of the offending vehicle has categorically deposed as RW2 that he had duly checked and verified the genuineness of the Driving Licence, Ex.R4 and the driver was found authorized to drive to drive the offending vehicle. Owner has clearly discharged the burden placed upon him in terms of the judgment of Hon'ble Supreme Court in **PEPSU Road Transport Corporation v. National Insurance Company Ltd.**, ***(2013) 10 SCC 217***. It has been held by the Hon'ble Supreme Court that the owner cannot be expected to go to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of a driver. However, the situation would be different if at the time of insurance of vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority.

Ex.R8 i.e., the verification report of the said Driving Licence reveals that respondent – driver was authorised to drive the offending vehicle at the time of the accident. There is no evidence on record to prove violation of any of the terms and conditions of the insurance policy by respondent No.5. In this situation, Insurance company cannot be absolved of its liability. It is incumbent upon the insurance company in such a situation to lead positive evidence to show violation of the terms and conditions of the insurance policy.

Reliance by learned counsel for the appellant on decision of this Court in Shriram General Insurance Company Ltd. v. Asha and others, *2015 ACJ 1005* is misplaced as the facts and circumstances of the said case are not relevant in the present factual matrix. In Shriram's case (supra), owner of the offending vehicle was the driver's father. Thus it was held that it cannot assumed that he had no knowledge about one of the two licences held by his son to be forged.

Insofar as the quantum of compensation is concerned, learned counsel for the appellant is unable to deny that income of the deceased has been assessed as per the last drawn salary certificate. Medical allowance has been deducted therefrom. There is no dispute regard the age of the deceased which is duly proved on the basis of his matriculation certificate Ex.P4 as well as driving licence Ex.P10 and the post-mortem report, Ex.P14.

Contention of learned counsel for the appellant that deduction of 1/3rd should have been made instead of 1/4th as sons of the deceased are major therefore not dependant, is liable to be rejected. It is a settled position that a legal heir/representative is entitled to claim compensation even if he is not dependant on deceased. To say that on account of sons being married and/or living separately proves that there is no loss of dependancy, is not justified in our society.

Keeping in view the facts and circumstances of the case, learned counsel is unable to point out any illegality, infirmity or perversity in the impugned award dated 19.05.2015 passed by learned Motor Accident Claims Tribunal, Hisar which warrants interference by this Court.

Appeal is accordingly dismissed.

(LISA GILL)
JUDGE

November 6 , 2015.
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