IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7024 of 2011 &
XOBJC No.18-CII of 2012
Date of Decision:- 29.04.2015

M/s Reliance General Insurance Company Ltd.

.....Appellant

Versus

Deepika Sharma and others

.....Respondents

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 Talwar, Advocate,
for the appellant-Insurance Company.

Mr. Jangvir Singh Hooda, Advocate
for respondent Nos.1 and 2.

Respondent Nos.3 and 4 ex-parte.

None for respondent Nos.5 and 6/cross-objectors.

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SHEKHER DHAWAN, J.

Present appeal filed by appellant-Insurance Company and cross-objection filed by respondent Nos.5 and 6, who are parents of deceased Rahul Sharma, against award dated 20.09.2011, passed by the Motor Accident Claims Tribunal, Gurgaon (hereinafter to be referred as 'The Tribunal') whereby 'The Tribunal' awarded compensation of ₹12,34,000/- on account of death of Rahul Sharma.

2. Relevant facts for the purpose of decision of present appeal and cross-objection that on 15.08.2009 Rahul Sharma (since deceased) was going on his car bearing registration No.DL-9CF-3898. When he reached near Shanker Chowk, his vehicle hit by Tavera vehicle bearing registration No.DL-IVB-5883, which was being driven in a rash and negligent manner. Resultantly, he sustained injuries and was taken to hospital, where he succumbed to the injuries. The matter was reported to the police. Claimants claimed compensation to the tune of ₹30,00,000/-. Respondent contested the claim petition on all accounts. 'The Tribunal' after considering the material and evidence available on file, returned the findings that claimants are entitled to receive payment of ₹12,34,000/- on account of death of Rahul Sharma. Aggrieved by passing of said award, the appellant-insurance Company has filed the present appeal and cross-objection filed by parents of the deceased.

3. At the time of arguments, Mr. Ashwani Talwar, learned counsel for the appellant-Insurance Company took the plea that vehicle No.DL-IVB-5883 was registered as a Light Passenger Vehicle with sitting capacity of ten persons and was insured as a commercial vehicle carrying 9 + 1 passengers. However, the driving licence of driver Parkash Singh,

which has been placed on file, was of Motorcyle with gear and a Light Motor Vehicle. It is not disputed in any way that liability of insurance company comes into picture, only if driver was having valid driving licence. It was obligatory as per law that a person driving commercial vehicle must be having endorsement on his driving licence to that extent. Even no recovery rights has been given to the appellant-Insurance Company, as per law laid down by Hon'ble Supreme Court in case **National Insurance Company Limited** Vs. **Swarn Singh**, **2003(3) LJR 826 SC.**

4. Respondent Nos.3 and 4 i.e. driver and owner of offending vehicle failed to put in appearance and were proceeded against ex- parte.

5. Having considered the entire matter, this Court is of the considered view that 'The Tribunal' fell in error while fixing the liability to pay the amount of compensation. 'The Tribunal' has returned the finding that respondent No.1 was holding a driving licence to drive LMV, non-transport vehicles but in the present case offending vehicle was transport vehicle and as per Section 3 of The Motor Vehicles Act, 1988, no authorization was received from department to drive offending vehicle. However, 'The Tribunal' discarded the plea taken by insurance company simply on the ground that insured was not supposed to know the technicalities of the rules under 'The Motor Vehicles Act'. He was holding a valid driving licence. As per 'The Tribunal' the insurance company was required to prove the negligence on the part of the driver so

as to escape his liability. However, these findings of facts recorded by 'The Tribunal' are against facts and provisions of law. As per Section 3 of The Motor Vehicles Act, respondent No.1 to 3 was required to have licence, as required under the law and proper authorization having been done for the purpose. In such a case, if the driver was not having valid driving licence, no liability of insurance company can be fastened. For ready reference, Section 3 of the Act, is reproduced as under: -

> *"3. **Necessity for driving licence.** (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 1[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.*
>
> *(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."*

6. More so, as per law laid down by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Swarn Singh's case (supra)**, appellant-insurance company can be held liable to satisfy the claim at the first instance and then to recover the same amount from driver and owner. But no such recovery rights even given to the appellant-insurance company. Appellant-insurance company has precisely filed appeal for that purpose.

7. In view of the above, the findings recorded by 'The Tribunal' are modified to the extent that appellant-Insurance Company shall be entitled to recover the amount of compensation from the driver and

owner, paid by insurance Company to the claimants in this case along with 7.5% interest from the date of payment till the date of realization by the insurance company.

8. Accordingly, the present appeal is partly accepted.

XOBJC No.18-CII of 2012: -

Cross-objection has been filed by respondent Nos.5 and 6, who are parents of deceased Rahul Sharma, on the ground that 'The Tribunal' has not awarded just compensation in this case. 'The Tribunal' has not awarded anything on account of future earnings. The age of the deceased was 27 years only and with the passage of time his earnings were bound to grow. But still 'The Tribunal' has not awarded any amount on account of enhanced future earnings. As per law laid down by Hon'ble Supreme Court in case **Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54**, at the age of 27 years the future earnings are to be enhanced @ 50%. Taking the present case to be a case of increase of 50% on account of future earnings, the total amount of compensation on account of loss of earnings comes to ₹18,36,000/- against ₹12,24,000/- already awarded by 'The Tribunal' and claimants are certainly entitled to the said amount of compensation. 'The Tribunal' has also not awarded just compensation on account of loss of consortium, which comes to ₹1,00,000/- and another sum of ₹25,000/- on account of funeral expenses and ₹50,000/- on account of love and affection. The total enhanced amount is as under: -

Particulars	***Total compensation amount***	***Already awarded amount***
After applying 50% increase on account of future earnings	₹18,36,000/-	₹12,24,000/-
Loss on account of consortium	₹1,00,000/-	₹5,000/-
Loss on account of funeral expenses	₹25,000/-	₹5,000/-
Loss on account of love and affection	₹50,000/-	Nil
Total enhanced amount = ₹7,77,000/-	₹20,11,000/-	- ₹12,34,000/-

2. That way, the total enhanced compensation comes to ₹7,77,000/- (₹6,12,000/- + ₹95,000/- + ₹20,000/- + ₹50,000/-). The liability to pay the compensation amount shall be of the insurance company at the first instance. However, the Insurance Company shall be entitled to recover the said amount from the driver and owner, as per law laid down by Hon'ble Supreme Court in **National Insurance Company Limited case (supra).** Remaining conditions regarding rate of interest and proportionate disbursal of amount shall remain unaltered.

3. Accordingly, the cross-objection partly accepted.

(SHEKHER DHAWAN)
JUDGE

April 29, 2015
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