

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**XOBJC-93-CII-2015 IN/AND
FAO-1744-1994 (O&M)
Date of decision: 23.05.2016**

National Insurance Co. Ltd.

...Appellant

Versus

Smt. Beena and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Present: Mr. Deepak Suri, Advocate
for the appellant.

Mr. Vikas Kumar, Advocate
for respondent Nos.1 and 2/Cross-objectors/claimants.

Respondent No.4 proceeded ex-parte vide order
dated 09.09.2014.

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JITENDRA CHAUHAN, J.

This appeal has been directed against the impugned award dated 11.05.1994, passed by learned Motor Accidents Claims Tribunal, Faridabad (for brevity 'the Tribunal') vide which the claim petition filed by the appellant was allowed, whereas, the cross-objections have been

filed by respondent Nos.1 and 2/claimants for seeking enhancement of the amount of compensation awarded vide aforesaid award passed by learned Tribunal.

The learned counsel for the appellant submits that the learned Tribunal wrongly fastened the liability upon the appellant as the driver of the offending vehicle was holding a fake driving licence, which is the breach of the policy conditions.

The learned counsel for the cross-objector/respondent Nos.1 and 2 states that (1) less amount is awarded by the learned Tribunal towards loss of consortium; (2) nothing has been awarded towards loss of love and affection to the mother of the deceased, which is contrary to the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others***, (2013-3) PLR 776; and (3) the learned Tribunal wrongly applied the multiplier of 16 as the age of the deceased, Nanak Chand was 22 years at the time of accident.

As far as respondent No.5 is concerned, no application for bringing on record his LRs has been filed. Learned counsel for the appellant submits that respondent No.5 was proceeded against ex-parte before learned Tribunal. In these circumstances, service upon LRs of respondent No.5, is dispensed with.

I have heard the learned counsel for the parties and perused the record.

FAO No.1744 of 1994

During the course of trial before the learned Tribunal, it has come on record that the licence in question was issued by the Licencing Authority, Bharatpur, Rajasthan. As per the statement of RW2-Rajpal Kher, he was deputed as surveyor to investigate the genuineness of the driving licence, Ex.R1 by respondent No.3-insurance company. As per the report he personally inspected the record and on the basis thereof, the Superintendent of the office issued a certificate Ex.R2, on the basis which report, Ex.R3 was prepared to the effect that licence Ex.R1 was not issued by the Licencing Authority, Bharatpur, as asserted by respondent Nos.4 and 5. It is further to be noticed that as per the statement of RW4-Deen Dayal Goyal, Clerk of the office of District Transport Officer, Bharatpur, Ex.R2 was issued by their office and driving licence, Ex.R1 was not issued by the office of the District Transport Office, Bharatpur. Otherwise also respondent No.5-Kishan Singh, the driver of the vehicle is a native of District Faridabad. It is not explained as to why and how the driving licence was obtained from Registration Authority, Bharatpur. Accordingly, it is conclusively proved that the licence held by the driver-respondent No.5 at the time of accident was a fake document.

In view of the law laid down by Hon'ble the Supreme Court of India in '**M/s United India Insurance Co. Ltd. Vs. Davinder**

Singh', 2008(1) All MR 463 and '**National Insurance Co. Ltd. Vs. Swaran Singh and Others'**, 2004(2) RCR (Civil) 114, the present appeal is disposed of with a direction to the appellant to pay the compensation in the first instance and recover the same from respondent No.4 and LRs of respondent No.5 in accordance with law.

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From the perusal of the award, it is noticed that the learned Tribunal did not award any compensation on account of the future prospects. It is not in dispute that the deceased was 22 years of age at the time of his death. Therefore, keeping in view the law laid down in **Rajesh Vs. Rajbir Singh**, 2013(3) R.C.R. (Civil), 170 (SC), an addition of 50% is ordered on the actual income of the deceased towards future prospects. However, as the matter pertaining to the future prospects is pending adjudication before Hon'ble the Supreme Court in SLP (Civil) No.16735 of 2014, therefore, the amount of future prospects be released on furnishing of requisite indemnity bonds by the cross-objector/respondent Nos.1 and 2.

As per the law laid down in **Sarla Verma v. DTC**, (2009) 6 SCC 121, the multiplier ought to have been 18 instead of 16.

In this way, the amount of compensation under the head of 'loss of dependency' comes to Rs.1500/- + 50% X 12 X 18 X 2/3 = Rs.3,24,000/-, as against an amount of Rs.1,92,000/-, assessed by the

learned Tribunal under this head.

Following the law laid down in Vimal Kanwar's case amount of Rs.50,000/- towards loss of love and affection shall be payable to the mother of the deceased, only, if she is alive.

As per the law laid down in Rajesh's case (supra), amount of Rs.1,00,000/- towards loss of consortium payable to the wife of the deceased only.

Keeping in view the fact that nothing has been awarded by the learned Tribunal to the claimants under the head cremation and last rites, therefore, this Court deem it appropriate to allow Rs.5,000/- under this head.

In view of the above, the claimants are held entitled to the enhanced compensation of Rs.2,87,000/- [Rs.1,32,000/- (enhancement towards loss of dependency) + Rs.50,000/- (towards loss of love and affection payable to the mother of the deceased, only on her furnishing of affidavit) + Rs.1,00,000/- (towards loss of consortium payable to the wife of the deceased, only) + Rs.5,000/- (towards cremation and last rites)] as indicated above, in the manner prescribed in the impugned award, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of

filing the present appeal, till its realization.

With the aforesaid modification in the impugned award, the present cross-objection is partly allowed.

23.05.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**