

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

(1) **FAO No.2203 of 1994 (O&M) and
Cross Objection No.47-CII of 1995
Date of decision : 05.08.2016**

The New India Assurance Company Ltd.

.....Appellant

Versus

Mange Ram and others

...Respondents

(2) **FAO No.2204 of 1994 (O&M) and
Cross Objection No.48-CII of 1995**

The New India Assurance Company Ltd.

.....Appellant

Versus

Mange Ram and others

...Respondents

(3) **FAO No.2205 of 1994 (O&M)
Cross Objection No.49-CII of 1995**

The New India Assurance Company Ltd.

.....Appellant

Versus

Mange Ram and others

...Respondents

(4) **FAO No.2206 of 1994 (O&M) and
Cross Objection No.50-CII of 1995**

The New India Assurance Company Ltd.

.....Appellant

Versus

Mange Ram and others

...Respondents

*FAO-2203-1994 (O&M) with Cross Objection No.47 -CII-1995,
FAO-2204-1994 (O&M) with Cross Objection No.48 -CII-1995,
FAO-2205-1994 (O&M) with Cross Objection No.49 -CII-1995,
FAO-2206-1994 (O&M) with Cross Objection No.50 -CII-1995 and
FAO-2211-1994 (O&M).*

-2-

(5)

FAO No.2211 of 1994 (O&M)

The New India Assurance Company Ltd.

.....Appellant

Versus

Ashwani Kumar alias Ghuk and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. L.M. Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate for appellant-
Insurance Company.

Respondent No.1 died.

Mr. Deepak Gupta, Advocate for
respondents No.2 & 3/cross objectors.

None for respondents No.4 & 5.

DARSHAN SINGH, J.

This judgment shall dispose of all the five appeals and the cross-objections mentioned above. The appeals at Sr. No.1 to 4 have arisen out of the same award dated 09.08.1994 and the appeal at Sr. No.5 has arisen out of the separate award dated 09.08.1994, but out of the same motor vehicular accident. Both these awards have been passed by the learned Motor Accidents Claims Tribunal, Bathinda (hereinafter called the “Tribunal”), vide which the respondents-cross objectors No.1 to 3 of the

first four appeals have been awarded compensation to the tune of ₹ 2,50,000/-, ₹ 72,000/-, ₹ 40,000/- and ₹ 40,000/- on account of death of Raj Kumar, Bholi alias Bala, Ravi and Deepak, respectively, in the motor vehicular accident, which took place on 06.10.1991. Respondent No.1 Ashwani Kumar alias Ghuk in the fifth appeal has been awarded compensation to the tune of ₹ 25,000/- on account of the injuries suffered by him in the same accident.

2. All these appeals have been filed by the appellant-Insurance Company to assail the award.

3. The Cross Objections have been filed in the first four appeals by respondents No.1 to 3-cross objectors for enhancement of the amount of compensation.

4. I have heard learned counsel for the parties and gone through the record of the case.

5. Initiating the arguments, Mr. L.M. Suri, learned Senior Advocate for the appellant-Insurance Company contended that it was established from the evidence on record that the original driving licence of respondent Subhash Chand, the driver of the vehicle was fake. The learned Tribunal has fastened the appellant-Insurance Company with liability simply on the ground that the said licence was later on renewed. He contended that subsequent renewal of the licence will not make the fake licence valid, so the learned Tribunal was not justified to fasten the liability upon the appellant-Insurance Company.

6. On the other hand, learned counsel for respondents No.1 to 3-cross objectors contended that very less amount of compensation has been awarded to the claimants in all the claim petitions. He contended that in FAO No.2203 of 1994, deceased Raj Kumar had six dependants but the learned Tribunal has wrongly deducted 1/3rd of his income towards his personal and living expenses. The multiplier has also been applied wrongly. Nothing has been awarded towards loss of love and affection and future prospects. Very less amount has been awarded towards funeral expenses.

7. He further contended that in FAO No.2204 of 1994 Smt.Bholi wife of Raj Kumar has died. She was 30 years of age. Her notional income has been taken to be very less by the learned Tribunal. Multiplier has also been wrongly applied. In her case also, nothing has been awarded towards love and affection and funeral expenses.

8. He further contended that in FAO Nos.2205 and 2206 of 1994, two children have died but only ₹ 40,000/- each, has been awarded as compensation, which is highly inadequate. He relied upon case ***Ravinder Kaur and another Vs. Roop Lal and others 2006(4) RCR (Civil) 329*** and contended that at least ₹ 2,00,000/- each should have been awarded.

9. In reply to the aforesaid contentions, learned counsel for the appellant-Insurance Company contended that the accident has taken place in October, 1991 and the learned Tribunal has rightly determined the income of deceased Raj Kumar and Smt. Bholi, which was prevalent at that time. He further contended that the deduction was also correctly made towards

personal living expenses. The deduction from the income is to be made keeping in view the number of dependents who have been left behind by the deceased. Thus, he contended that just amount of compensation have been awarded.

10. Respondents No.4 & 5, the owner and driver of the vehicle, have been duly served by way of publication in the newspaper "The Tribune" but in spite of that, none has put in appearance on their behalf to contest the appeals.

11. I have duly considered the aforesaid contentions.

12. Firstly, I take up the plea raised by learned counsel for the claimants/cross objectors with respect to the inadequacy of the compensation.

13. The FAO No.2203 of 1994 is with respect to the death of Raj Kumar in this accident. The learned Tribunal has determined the income of deceased Raj Kumar to be ₹ 2400/- per month. Deceased Raj Kumar used to ply the canter owned by his mother, which shows that he was a skilled person and his income was bound to increase with the passage of time. He was 32 years of age. Thus, at the time of death, he was a young energetic man. So, the learned Tribunal should add 50% of the income as future prospects to his income. Thus, the total income of deceased comes to ₹ 3600/- (2400+1200) i.e. ₹43,200/- per annum. The present claim petition has been filed by the parents and the minor son of deceased Raj Kumar. He was having three children, wife and parents. In this very accident his wife

and two children have died. So, he died living behind only three living members of the family. The deduction from the income of the deceased towards his personal and living expenses is to be made keeping in view the number of dependents, which he had left on the date of his death. In this case he had left three dependents. So, 1/3rd of his income shall be deducted towards his living and personal expenses. The remainder comes to ₹ 28,800/-. The deceased was 32 years of age. Keeping in view his age, the multiplier of 16 shall be applicable. Thus, the loss of dependency comes to ₹ 4,60,800/-. Minor claimant Mukesh son of Raj Kumar shall also be entitled to ₹ 1,00,000/- towards loss of love, care and guidance. The parents of the deceased shall also be entitled to ₹ 1,00,000/- towards loss of love and affection of their son. They will also be entitled to ₹ 25,000/- towards funeral expenses. Thus, the total amount of compensation comes to ₹ 6,85,800/-, to which the claimants are entitled.

14. In FAO No.2204 of 1994, the compensation has been claimed on account of death of Smt. Bholi wife of Raj Kumar. She was 30 years of age and was a housewife. The learned Tribunal has taken into consideration the notional income of the deceased to be ₹ 750/- per month, which is on the lower side. The notional income of a non-earning person is taken to be ₹ 15000/- per annum. So, the notional income of Smt. Bholi shall be taken to be ₹ 15,000/- per annum. In view of her age, the multiplier of 17 shall be applicable. The loss of dependency comes to ₹2,55,000/-. In addition to that minor claimant Mukesh shall also be entitled to ₹ 1,00,000/-

towards loss of love, care and guidance. They will also be entitled to ₹ 25,000/- towards funeral expenses. Thus, the total amount of compensation comes to ₹ 3,80,000/-, to which the claimants are entitled.

15. Now I take up FAO Nos.2205 and 2206 of 1994. The learned Tribunal has awarded a compensation of ₹ 40,000/- each, on account of death of Ravi and Deepak, minor children of deceased Raj Kumar. The claimants are grandparents and brother of the deceased children, who cannot be considered to be dependent upon the income of the deceased. Moreover, the deceased were the children having no income. In case *Ravinder Kaur and another Vs. Roop Lal and others* (supra), child aged 4 years has died in the motor vehicular accident. This Court has enhanced the amount of compensation from ₹ 30,000/- to ₹ 2,00,000/-. The claim petition in that case was also filed in the year 1992. The present accident has also taken place on 06.10.1991. The only difference in the present case is that the present claim petition has been filed by the grandparents and the brother, whereas in *Ravinder Kaur and another Vs. Roop Lal and others* (supra) the claimants were the parents. So, taking into consideration the entire facts and circumstances, the amount of compensation in FAO Nos.2205 and 2206 of 1994 is enhanced from ₹ 40,000/- to ₹ 1,00,000/-, each.

16. I found substance in the contentions raised by learned counsel for the appellant-Insurance Company that renewal of the licence will not render the fake licence to be valid. The Hon'ble Supreme Court in

case ***Oriental Insurance Company Co. Limited Vs. Prithvi Raj 2008(1)***
RCR (Civil) 851 has laid down that the renewal cannot be take away effect of fake licence and transform a fake licence as genuine. In the instant case, the learned Tribunal on appreciation of the evidence has come to the conclusion that the driving licence of respondent Subhash Chand the driver of the vehicle was fake. The said finding has not been challenged by the driver and owner of the vehicle, rather they had not contested the claim petition as well as the present appeal. No doubt the said driving licence was later on renewed by the Licensing Authority, Jind. The learned Tribunal has concluded that as the driving licence of respondent Subhash Chand was validly renewed by Licensing Authority, Jind, so the Insurance Company shall be liable, but these findings recorded by the learned Tribunal are contrary to the settled law. As per the ratio of law laid down by the Hon'ble Supreme Court in case ***Oriental Insurance Co. Limited Vs. Prithiv Raj*** (supra), the subsequent renewal will not render the fake licence as a valid licence. So, the licence of respondent Subhash Chand the driver of the vehicle was fake, which is a violation of the terms and conditions of the insurance policy. But as the claimants are the heirs of the victim of the motor vehicular accident, so the appellant Insurance Company will at the first instance make the payment of the amount of the compensation to the claimants and it will be entitled to recover the same from the insured *i.e.* the owner of the vehicle by executing this very award.

17. Thus, keeping in view my aforesaid discussion, all the five

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FAO-2206-1994 (O&M) with Cross Objection No.50 -CII-1995 and
FAO-2211-1994 (O&M).*

-9-

appeals filed by the Insurance Company and all the four cross objections filed by the claimants-cross objectors are hereby partly allowed. In Cross Objection No.47-CII of 1995, the amount of compensation is enhanced to ₹ 6,85,800/- from ₹ 2,50,000/-; in Cross Objection No.48-CII of 1995, the amount of compensation is enhanced to ₹3,80,000/-from ₹ 72,000; in Cross Objection Nos.49-CII and 50-CII of 1995, the amount of compensation is enhanced to ₹ 1,00,000/- from ₹40,000/-,each. The amount of compensation at the first instance shall be paid by the appellant-Insurance Company and it shall be entitled to recover the same from the insured-owner of the vehicle namely M/s Kamroop Roadways by executing this very award. The apportionment of the amount of compensation shall be as per the award passed by the learned Tribunal. As the award was passed twenty two years back, so if the amount of compensation is paid to the claimants within 60 days from the date of this judgment, the claimants shall not be entitled to any interest, failing which they will be entitled to interest at the rate of 7.5% per annum on enhanced amount from the date of filing the claim petition till realisation.

05.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No