

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

Decided on: 07.09.2016

1. FAO No.1238 of 1997

National Insurance Company LimitedAppellant

Versus

Smt. Surjit Kaur and othersRespondents

2. FAO No.1610 of 1997

Smt. Surjit KaurAppellant

Versus

Dilbag Singh and othersRespondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate
for the appellant (in FAO No.1238 of 1997)
and for respondent No.3 (in FAO No.1610 of 1997)

Mr. Sagar Aggarwal, Advocate
for Mr. Ashit Malik, Advocate
for respondent No.1 (in FAO No.1238 of 1997)
and for the appellant (in FAO No.1610 of 1997)

REKHA MITTAL, J.

This order will dispose of FAO Nos.1238 of 1997 '*National Insurance Company Limited vs Surjit Kaur and others*' and No.1610 of 1997 '*Surjit Kaur vs Dilbag Singh and others*' as these have emerged out of the same award dated 06.03.1997 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') whereby Surjit Kaur (claimant) has been allowed compensation in respect of death of Joginder Singh in a motor vehicular accident.

FAO No.1238 of 1997

Counsel for the National Insurance Company Limited

(hereinafter to be referred as 'the company') has submitted that as the deceased was travelling on a pillion of motorcycle No.HR-05-B-7098 insured with the company, the company is not liable to pay compensation as the policy in question is an act policy and pillion rider under the act policy cannot be considered to be third party. In support of his contention, he has referred to judgments ***“New India Assurance Company Limited vs K. Rajanna and others”***, 1995 ACJ 1015, ***“New India Assurance Company Limited vs Ashok Kumar Acharya and others”***, 1995 ACJ 189 and ***“Surjit Singh vs Santosh Kumar and others”***, 1989 ACJ 466.

Counsel for the claimant, on the contrary, has submitted that compensation in respect of pillion rider was considered by the Tariff Advisory Committee and it was decided that death or bodily injury to any person including person conveyed in or on the motorcycle would be covered provided such person is not carried for hire or reward. The instructions were made effective w.e.f. 25.03.1977. The Tariff Advisory Committee had directed; ***“All existing policies should be deemed to incorporate this amendment automatically”*** irrespective of the fact whether it is 'Act Policy' or a 'comprehensive policy'. It is argued that the instructions issued by the Tariff Advisory Committee that were made effective w.e.f. 25.03.1977 remained in vogue even on the date of accident that took place on 09.01.1994. In support of his contention, he has referred to a Division Bench judgment of Himachal Pradesh High Court ***“United India Insurance Company Limited vs Prem Singh and others”***, 2001 ACJ 1445.

I have heard counsel for the parties and perused the

paperbook particularly the award passed by the learned Tribunal.

There is no dispute that the deceased was a pillion rider on motorcycle No.HR-05-B-7098 which was driven by Dilbag Singh son of Banta Singh. Counsel for the company has fairly conceded that in none of the judgments passed by different High Courts wherein it has been held that pillion rider under the act policy cannot be considered to be a third party, therefore, the insurance company is not liable to pay compensation, the instructions issued by the Tariff Advisory Committee that were made effective w.e.f. 25.03.1977 were brought to the notice of the Court. On the contrary, counsel for the company has nothing to submit that the instructions relied upon by counsel for the claimant were ever withdrawn or modified by the Tariff Advisory Committee till the date accident in question took place. In the Division Bench judgment of the Himachal Pradesh High Court in ***United India Insurance Company's case (supra)***, in para 17, the Court has noted that counsel for the insurance company was requested to verify if the instructions of the Tariff Advisory Committee dated 13.03.1978 were followed by the insurance company and counsel, on instructions from the insurance company fairly conceded that the instructions of the Tariff Advisory Committee were followed by the insurance company. It has further been noticed that the instructions were noticed by a Division Bench of Kerala High Court in ***“Oriental Insurance Company Limited vs Daniel”, 2000(2) TAC 74 (Kerala)***. Taking into consideration the instructions, the Court held that pillion riders are covered under the act policy and insurance company is liable to indemnify the insurer.

In the light of judgment passed by the Himachal Pradesh

High Court in the year 2000 coupled with the factum that counsel for the insurance company has not disputed that instructions of the Tariff Advisory Committee dated 13.03.1978 were followed by the insurance company, contention of the appellant that the insurance company is liable to be exonerated of its liability to indemnify the insured is misconceived and liable to be rejected.

For the foregoing reasons, the appeal filed by the company fails and is accordingly dismissed.

FAO No.1610 of 1997

The claimant is in appeal seeking enhancement of compensation in regard to death of her son – Joginder Singh aged about 25 years in a motor vehicular accident.

The learned Tribunal assessed income of the deceased at Rs.1,000/- per month, deducted 50% towards personal expenses and adopted a multiplier of 10 to compute loss of dependency to the extent of Rs.60,000/- payable with interest @12% per annum from the date of filing of claim application i.e. 25.07.1994 till realization.

Counsel for the claimant has submitted that the deceased was working in Italy and in this regard, documents Ex.A3, A5 to A14 were produced on record but the learned Tribunal wrongly refused to rely upon these documents. It is further argued that entries in the passport held by the deceased are sufficient to show that the deceased had visited Italy on a number of occasions and was working there. In addition, it is submitted that as the proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence, the Tribunal has committed an error by discarding the documentary

evidence in regard to employment of the deceased at Italy and his income @ Rs.35,000/- per month.

Another submission made by counsel is that the Tribunal has allowed multiplier of 10 which is not in consonance with the judgment of Hon'ble the Apex Court "***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another***", 2009(3) R.C.R. (Civil) 77. Further, no compensation has been awarded under conventional heads.

Counsel for the insurance company has supported the award in regard to assessment of income of the deceased on the basis of wage available to an unskilled worker in the year 1994. It is further submitted that the Tribunal on a detailed consideration of testimony of Smt. Surjit Kaur, mother of the deceased has rightly refused to accept contention of the claimant that either the deceased was earning Rs.35,000/- per month or he had been sending an amount of Rs.2,25,000/- per annum to his parents for the past about 3-4 years. The Tribunal has further held that documents Ex.A5 to A14 are not admissible because the originals of the same have not been produced in the Court nor the person who attested the documents has been examined.

I have heard counsel for the parties and perused the award passed by the learned Tribunal.

Indisputably, the Tribunal can adopt its own procedure for deciding the claim and strict principles of law of evidence are not applicable to the proceedings that are summary in nature. Nevertheless, the Tribunal has an obligation to assess just, fair and equitable

compensation in the given facts and circumstances that can never be a bonanza, largesse or a source of profit.

In the case at hand, the claimants produced on record photocopies of documents Ex.A5 to A14. As has been noticed by the learned Tribunal, neither the originals of these documents have been produced nor the person who attested the documents has been examined to prove their admissibility and authenticity. The plea of the claimant that deceased was drawing a salary of Rs.35,000/- per month and had been sending an amount of Rs.2,25,000/- per annum to his parents does not find corroboration from any independent source much less a documentary evidence. On a pointed query raised by the Court, counsel for the claimant has fairly informed that there is no documentary evidence available for showing remittance of any amount by the deceased to his parents. An important fact noticed by the Tribunal is that father of Joginder Singh used to work as a labourer at Rs.500/- to Rs.700/- per month to support the family comprising of seven members, sufficient to doubt correctness of version of the claimant that deceased had been sending a sum of Rs.2,25,000/- annually for the past 3-4 years. Under these circumstances, contention of the claimant that income of the deceased is liable to be assessed on the basis of documents A5 to A14 is not meritorious and thus, untenable. Counsel for the claimant has not disputed that in the year 1994, minimum wage available to a casual worker was not more than Rs.1,000/- per month.

The passport of the deceased records his date of birth as 04.01.1964. The deceased met with an unfortunate end on 09.01.1994,

therefore, he was more than 30 years on the date of occurrence. As the deceased was in the age bracket of 31 to 35 years, admissible multiplier in the light of judgment in *Sarla Verma's case (supra)* would be 16. The claimant shall be entitled to benefit of increase in income for future prospects to the extent of 50%. Accordingly, loss of dependency would be **Rs.72,000/-** ($\text{Rs.500/-} \times 12 \times 16 = \text{Rs.96,000/-} + \text{Rs.48,000/-}$ (50% for future prospects) = $\text{Rs.1,44,000/-} - \text{Rs.72,000/-}$ (50% deduction towards personal expenses). The claimant is awarded an amount of **Rs.10,000/- each** for expenses on funeral and loss of estate. Another amount of **Rs.25,000/-** is awarded for loss of love and affection. In this manner, total compensation comes to **Rs.1,17,000/-** and the enhanced compensation is **Rs.57,000/-** ($\text{Rs.1,17,000/-} - \text{Rs.60,000/-}$) payable with interest @ 7.5% per annum from the date of petition till realization.

The appeals are disposed of in the aforesaid terms.

07.09.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No