

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5736 of 2009

Date of Decision.30.03.2016

Gurdeep Kaur and others

.....Petitioners

Vs.

Jaswinder Singh and others

.....Respondents

Present: Mr. Gulzar Mohd, Advocate
for the appellants.

Mr. D.R. Punia, Advocate
for respondent No.2.

Ms. Vandana Malhotra, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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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K. KANNAN J. (ORAL)

1. The appeal is for enhancement of compensation by the claimant. The insurance company had been exonerated on the ground that there was no effective driving licence.

2. The deceased was said to be employee in Agro Farm and representative of the employer had been examined to say that he was being paid ₹4000/- per month as salary. The Court discarded the documentary evidence as not sufficient for no proof of attendance or payment of salary by production of salary register before the Tribunal. I will not find any error in the approach of the Tribunal and affirm the finding already rendered that the income should be taken as ₹3000/- per month. However, since he was an able bodied person being just 40

years of age, I will take his employment as reasonably stable that would allow for prospect of increase in future by 50%. I will rework the compensation and apply the multiplier suitable to the age of the deceased as suggested by the Supreme Court in Sarla Verma Vs. DTC (2009) 6 SCC 121. I will also provide for ₹1 lac for loss of consortium and ₹50,000/- to each one of the children and parent considering the fact that the provision for interest from the date of accident would itself make the claim available in the manner in which it is provided in Rajesh v. Rajbir Singh (2013) 9 SCC 54. The several heads of claim are reworked and tabulated as under:-

FATAL ACCIDENT			
Age	40 years		
Occupation	Employee in Agro Farm		
Claimants	Widow, 2 children and mother		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income	3000	3000
2	Add, % of increase 50%		4500
3	Less, Deduction	2000	3375
4	Multiplicand (annualized by multiplying 12)		40500
5	Multiplier	13	15
6	Loss of dependence		6,07,500
7	Medical Expenses & Transportation		
8	Loss of Consortium		1,00,000
9	Loss of love and affection		1,50,000
10	Loss to estate		5000
11	Funeral expenses		10,000
	Total	3,14,000	8,72,500

3. There shall be a compensation of ₹8,72,500/- and the additional amount of compensation will also attract interest @7.5% from the date of petition till the date of payment. The additional amount

shall be distributed in the ratio of 2:2:2:1 amongst the wife, children and the mother respectively.

4. As regards the liability, if any violation of terms of policy was proved, the insurance company should have still been made liable and the issue that should have considered was whether the insurance company had proved the violation of terms of policy to allow for recoveries against the insured or not. The Supreme Court in New India Assurance Co., Shimla v. Kamla, (2001) 4 SCC 342 by reading of Section 149(4) proviso, has held that the insurer will always be liable even for violation of terms of policy. This has also been followed in several other judgments later.

5. The counsel appearing on behalf of the owner states that the insurance company has at all times to prove that the insured was guilty of negligence and failed to exercise reasonable care in the manner of fulfilling condition of policy regarding driving of vehicle by duly licensed driver. Absence of fake or valid driving licence or disqualification of driver are not defences available to insurer against the insured or third parties. This judgment in Lal Chand Vs. Oriental Insurance Co. Ltd. 2006(7) SCC 318, in my view, is wrongly understood by the counsel to state that the insurance company will have no defence at all even if it establishes that there had been a violation of terms of policy. In Lal Chand's case (supra), the Supreme Court was referring to the judgment in United India Insurance Co. Ltd. Vs. Lehu 2003(3) SCC 338 where the Court was holding that where the owner had satisfied himself that the driver had a licence, there could be no breach of Section 149(2) (a) (ii), if it turned out that the licence was fake. It is

one thing for a person to believe that the driver had a valid driving licence when it turned out to be fake but quite another to state that the driving licence which he had, had already expired but still the owner believed that the licence must have been renewed. There can be no such benefit in a situation where he has not exercised an appropriate care to ensure that the driver had obtained renewal at the appropriate time. The judgment in National Insurance Company Limited Vs. Swaran Singh (2004) 3 SCC 297 which was relied in Lal Chand's case again was a case which accepted the proposition that the liability shall be against the insurer and if at all, a right of recovery alone would be obtained by the insurance company. The decision in Swaran Singh's case was anchored on the decision in New India Assurance Co., Shimla v. Kamla referred to above and this judgment was again referred to in Lal Chand's case. The judgment in Lal Chand's case ought not to have been wrongly understood as making possible a full indemnity to the owner when the driving licence had not been valid and the owner believed that the driver had a driving licence, when it had expired. There can be no belief which is against the statute.

6. It is a matter of fact which is an admitted situation that the licence had expired on 14.05.2007 and the renewal had been effective from 26.09.2007. The accident had taken place on 21.09.2007 and even the renewal licence did not provide for a renewal to take effect from the date when the accident had taken place. Indeed, no such renewal would have been possible.

7. The counsel for the owner states that he has already deposited the amount as awarded. For any unrealized portion of the

award, the claimants shall be at liberty to exercise the right of recovery against the insurer and the insurer will in turn have a right to recover the same against the insured.

8. The appeal is allowed on the above terms.

(K. KANNAN)
JUDGE

March 30, 2016
Pankaj*