IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 16.03.2016.

FAO No.2937 of 2011 (O&M)

National Insurance Company Ltd. ....Appellant.

VERSUS

Jaswinder Singh and others ....Respondents.

WITH

FAO No.4487 of 2011 (O&M)

Jaswinder Singh and others ....Appellants.

VERSUS

Raj Kumar and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.N. Singal, Advocate
for the appellant (in FAO No.2937 of 2011) and
for respondent No.3 (in FAO No.4487 of 2011).

Mr. Achin Gupta, Advocate
for the appellants (in FAO No.4487 of 2011) and
for respondents No.1 to 4 (in FAO No.2937 of 2011).

Mr. N.S. Chahal, Advocate for
Mr. J.S. Brar, Advocate
for respondents No.5 and 6 (in FAO No.2937 of 2011) and
for respondents No.1 and 2 (in FAO No.4487 of 2011).

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SNEH PRASHAR, J.

The above captioned two first appeals had arisen from an award dated 01.11.2010 passed by learned Motor Accident Claims Tribunal, Faridkot (for short, "the Tribunal") in MACT Case No.37 of 2009 by virtue of which legal heirs (claimants) of deceased Harmandeep Kaur who lost her life in a vehicular accident, were awarded compensation. Both shall be disposed of by this common judgment.

The relevant facts which need elaboration are as under:-

On 24.04.2009, Harmandeep Kaur (since deceased) alongwith her husband Jaswinder Singh was coming from Moga to Malot by means of their car No.PB-08X-8313 (for short, "the car"). Jaswinder Singh was driving the car. When they reached near petrol pump near village Khara, a four-wheeler No.PB-10CB-3787 (hereinafter referred to as "the offending vehicle") being driven rashly, negligently and in a high speed came and struck into the car at the rear side. Because of the impact, the car rolled down into right side fields and Harmandeep Kaur suffered multiple injuries. She was taken to the hospital where she died.

A First Information Report No.44 dated 24.04.2009 under Sections 279, 337, 304-A and 427 of the Indian Penal Code in respect of the accident was registered against respondent-Raj Kumar at Police Station Sadar Kotkapura.

A petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation was filed by legal heirs of deceased Harmandeep Kaur impleading driver, owner and insurer of the offending vehicle as respondents. The petition was contested by the respondents. On the rival contentions of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal allowed the petition with costs and awarded compensation to the tune of Rs.5,08,000/- to the claimants alongwith interest at the rate of 8% per annum from the date of filing the petition till realization.

Feeling aggrieved by the award passed by learned Tribunal, while respondent No.3-National Insurance Company Limited preferred FAO No.2937 of 2011 alleging that no liability could be fastened on the insurer as the driving licence Ex.R4 of respondent-Raj Kumar was valid from 02.07.2009 to 01.07.2012 and the alleged accident took place on 24.04.2009, claimants Jaswinder Singh and others assailed the award dated 01.11.2010 by filing FAO No.4487 of 2011 on the ground that they had not been adequately compensated,

The submissions made by learned counsel for the parties have been heard and record perused.

FAO-2937-2011 (O&M)

Learned counsel for the appellant-insurance company argued that the accident took place on 24.04.2009. Admittedly, the offending vehicle was being driven by respondent-Raj Kumar. His driving licence Ex.R4 was tendered in evidence before the Tribunal. The said licence was issued on 02.07.2009 and was valid upto 01.07.2012. Apparently, the driving licence was got issued much after the date of accident and from that it follows that at the time of accident the driver of the offending vehicle had no valid and effective driving licence and the said vehicle was being driven in violation of the terms and conditions of the insurance policy. Accordingly, the appellant-insurance company had no liability to indemnify the insured and is entitled to recover the amount paid by it to the claimants as compensation.

The argument of learned counsel for the appellant-insurance company is devoid of merit. Admittedly, the accident had taken place on 24.04.2009. The driving licence Ex.R4 of respondent-Raj Kumar was valid for the period from 02.07.2009 to 01.07.2012. It is important to note that the number of old driving licence of respondent-Raj Kumar stands mentioned in the driving licence Ex.R4. The onus to prove issue no.3 that the driver of the offending four-wheeler was not holding a legal and effective driving licence was squarely on the appellant-insurance company (respondent No.3 before the Tribunal). It was for the said insurance company to prove that the old licence, the number of which is mentioned in the driving licence Ex.R4, had expired prior to the date of accident. When no evidence was led by the insurance company to prove the period for which the old driving licence of respondent-Raj Kumar was valid, it cannot be assumed or held on mere argument of learned counsel for the insurance company that respondent- Raj Kumar had no valid and effective driving licence on the date of accident. In fact, the driving licence Ex.R4 indicates that the old licence before it expired was duly renewed. There being no merit in the appeal of appellant-insurance company, it is dismissed.

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Learned counsel for the appellants-claimants argued that deceased Harmandeep Kaur was running a Beauty Parlour and was earning Rs.16,000/- per month but learned Tribunal erred in assessing the income of the deceased as Rs.4,000/- per month. Also, no amount was added to the income computing future prospects of the deceased. The deceased being 32 years aged, the multiplier of '13' applied by learned Tribunal is wrong as according to the age of the deceased '16' was the appropriate multiplier. The amount of Rs.40,000/- awarded under the heads of expenses incurred on last rites and for loss of consortium is on the lower side. No amount was awarded to the minor children for loss of love and affection.

Considering the evidence available on record, the claim of the appellants-claimants regarding income of Rs.16,000/- per month of the deceased by running a Beauty Parlour was not accepted by learned Tribunal However, keeping in view the age, status and contribution to the running of the household and applying some amount of guess work and hypothetical calculations learned Tribunal assessed the notional income of the deceased as Rs.4000/- per month. The said finding calls for no intervention.

The deduction of 1/4th of the income of the deceased towards her personal and living expenses is appropriate. Learned Tribunal applied the multiplier of '13' whereas since the age of deceased was 32 years, the multiplier of '16' would be the appropriate multiplier. Accordingly, the compensation payable to the appellants is calculated as under:-

1.	Monthly income of the deceased (in Rupees)		Rs.4000/-
2.	Actual age of the deceased		32 years
3.	Annual dependency		3/4 of Rs.4000 x 12 = Rs.36,000/-
4.	Multiplier		16
5.	Total		Rs.5,76,000/-

In addition to the amount of Rs.5,76,000/- calculated towards dependency, a further amount of Rs.1,00,000/- to claimant No.1 for loss of consortium and Rs.25,000/- towards funeral expenses is allowed which shall include the amount of Rs.40,000/- already awarded by learned Tribunal under both these heads. Another amount of Rs.1,00,000/- is awarded to appellants-claimants No.2 to 4 for loss of love and affection.

Accordingly, the appeal filed by appellants-claimants Jaswinder Singh and others is partly allowed and the award dated 01.11.2010 passed by learned Tribunal is modified. The enhanced compensation of Rs.2,93,000/- shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization. The amount of compensation will be disbursed to the appellants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

16.03.2016.
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