IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 11.04.2016.

FAO No.3558 of 2011 (O&M)

Sarabjit Singh @ Bittu ....Appellant.

VERSUS

Rajni and others ....Respondents.

WITH

FAO No.783 of 2012

Rajni and others ....Appellants.

VERSUS

Sarabjit Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Dhirinder Chopra, Advocate
for the appellant (in FAO No.3558 of 2011)
and for respondents No.1 (in FAO No.783 of 2012).

Mr. K.S. Dadwal, Advocate
for the appellants (in FAO No.783 of 2012) and
for respondents No.1, 2, 5 and 6 (in FAO No.3558 of 2011).

Mr. B.S. Saini, Advocate
for respondent No.3 (in FAO No.3558-2011) and
for respondent No.2 (in FAO No.783 of 2012).

Mr. Harsh Aggarwal, Advocate
for respondent No.4 (in FAO No.3558-2011) and
for respondent No.3 (in FAO No.783 of 2012).

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SNEH PRASHAR, J.

The above captioned two first appeals had arisen from the award dated 20.12.2010 passed by learned Motor Accident Claims Tribunal, Jalandhar (for short, "the Tribunal") in MACT Case No.50 of 2010 whereby the petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") filed by the claimants (appellants in FAO No.783 of 2012) for grant of compensation on account of death of Parveen Chander son of Swarana Ram, husband of appellant-Rajni and father of appellant-Lakhvir Kumar and respondents-Preeti and Balbir Kumar, in a motor accident on 17.07.2009, was partly allowed and an amount of Rs.9,09,347/- was awarded as compensation. Both the appeals shall stand disposed of by this common judgment.

The accident occurred when deceased Parveen Chander was returning to his village on his scooter No.PB-10AF-5391 and was hit by motorcycle bearing No.PB-36C-7063 (hereinafter referred to as the "offending motorcycle") driven by Sarabjit Singh @ Bittu (appellant in FAO No.3558-2011) due to his rash and negligent driving. On 18.07.2009 Parveen Chander succumbed to the injuries sustained by him in the accident. A First Information Report No.142 dated 19.07.2009 under Sections 279, 304-A and 427 of the Indian Penal Code was registered at Police Station Sadar Phagwara in respect of the accident in question against respondent-Sarabjit Singh @ Bittu.

The driver, owner and insurer of the offending motorcycle were held jointly and severally liable for payment of the compensation amount. Respondent-insurance company was directed to pay the amount of compensation within a period of two months failing which the claimants were made entitled to receive interest at the rate of 6% per annum from the date of claim petition till realization, but was granted recovery rights as per the provisions of Section 174 of the Act of 1988.

Feeling aggrieved by the award passed by learned Tribunal, while the appellant-Sarabjit Singh, driver of the offending motorcycle assailed the award dated 20.12.2010 by filing FAO No.3558 of 2011, the appellants-claimants Rajni and others preferred FAO No.783 of 2012 for enhancement of the compensation amount.

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

FAO-3558-2011

Assailing the finding of learned Tribunal that there was violation of terms and conditions of the insurance policy on part of the driver and owner of the offending motorcycle and the insurance company was given right to recover the amount paid as compensation to the claimants from the driver and owner, learned counsel for appellant-Sarabjit Singh (driver) submitted that Sarabjit Singh stepped into the witness box as RW2 and in Para No.2 of his affidavit Ex.RA, he specifically stated that the driving licence bearing No.1325/NDI dated 27.11.2002 issued by the Office of District Transport Office, Kapurthala, which was valid for driving motorcycle/car/tractor upto 20.01.2019 had been misplaced and he had obtained another learning driving licence bearing No.LL602/09-10 for driving motorcycle with gear, motor car and tractor and that was valid w.e.f. 03.06.2009 to 02.12.2009. Thereafter, he had obtained a regular driving licence bearing No.OLA::PB-36 No.:PB36-NDL/09-10 valid for the period 02.08.2009 to 20.01.2029. The learner's licence Mark-A and the subsequent regular licence Ex.R4 were tendered in evidence by him.

Learned counsel urged that it is a settled proposition of law that the burden is always on the insurance company to establish its objection that there had been violation of terms of the policy by employing a driver who had not been duly licenced. At no stage, the onus shifts on the driver to prove that the licence which he had tendered in evidence was a valid licence. At the first instance, mere absence of entry regarding licence No.1325/NDI dated 27.11.2002 in the record produced by RW1 Balwant Singh, Clerk, D.T.O. Office, Kapurthala would not mean that the driving licence was not issued by the said office. Secondly, even if the record pertaining to the said licence was not available, appellant Sarabjit Singh had tendered in evidence a learner's licence 'Mark-A' which was valid for the period 03.06.2009 to 02.12.2009. The accident took place on 17.07.2009 and is covered by that licence. Subsequent to that the driver had obtained a regular licence Ex.R4 and the insurance company failed to prove that the learner's licence Mark-A and the regular licence Ex.R4 were not valid and genuine documents. The second licence produced by the appellant was not to be ignored by learned Tribunal. To support his argument, learned counsel relied upon ***National Insurance Co. Ltd. vs. Gulam Mohmad and others, The Punjab Law Reporter Vol.CLXX-(2013-2).***

There appears no force in the above argument of learned counsel for appellant-Sarabjit Singh. In his cross-examination, RW2 Sarabjit Singh admitted that he is holding the driving licence no.1325/NDI dated 27.11.2002 issued by District Transport Office, Kapurthala. He accepted as correct the copy of the said licence Ex.R1 available on the judicial file. He outrightly denied the suggestion given to him that the said licence was fake. From his statement, it is clear that he was using driving licence no.1325/NDI dated 27.11.2002 Ex.R1. It was proved by RW1 Balwant Singh, Clerk, D.T.O. Office, Kapurthala that the licence Ex.R1 in the name of Sarabjit Singh had not been issued by District Transport Office, Kapurthala and was a fake licence. RW1 proved the report Ex.R2 given under his signature in that behalf. When the entry regarding issuance of the licence on the day it was purported to have been issued was missing in the record produced by RW1 Balwant Singh, rather the record had no entry dated 27.11.2002, that was the best possible evidence to prove that the driving licence Ex.R1 was a fake document.

As regards, the regular licence Ex.R4, it was valid for the period 20.08.2009 to 20.01.2029. Apparently the said licence was got issued after the date of accident i.e. 17.07.2009 and therefore the said document is of no help to the appellant. The learner's licence Mark-A tendered in evidence by appellant-Sarabjit Singh was also of no importance when he could not produce the original document and for that reason it was not accepted in evidence. Otherwise also, the said licence at the face of it does not appear to be a genuine document. The driving licence bearing no.1325/NDI dated 27.11.2002 Ex.R1 held by appellant-Sarabjit Singh was valid for the period 27.11.2002 to 20.01.2019. It appears strange that before the expiry date shown in the driving licence Ex.R1 the appellant obtained a learner's licence for the period 03.06.2009 till 02.12.2009 for six months and then before expiry of the period of learner's licence he obtained a regular licence valid for the period 02.08.2009 to 20.02.2029. In any case, since only a photocopy of the learner's driving licence was produced and the original was withheld, the said licence had no evidentiary value.

Thus, the findings of learned Tribunal that since the driving licence held by appellant-Sarabjit Singh was a fake licence and on that ground there had been violation of terms and conditions of the insurance policy, are affirmed and the recovery right as per the provisions of Section 174 of the Act of 1988 granted to the insurance company calls for no intervention. The appeal bearing FAO No.3558 of 2011 filed by appellant-Sarabjit Singh is dismissed.

FAO-783-2012

Learned counsel for the appellants-claimants argued that the age of the deceased was 43 years when he died in the accident but learned Tribunal wrongly took his age as 50 years as was mentioned in the postmortem report. The salary of the deceased was taken as Rs.16,000/- per month, but learned Tribunal twice applied deduction to the salary, firstly 1/4th on account of personal and living expenses of the deceased and secondly 1/3rd to the amount of dependency calculated on the ground that PW2 Pankaj, Clerk of the Office of D.T.C.-cum-Joint Director stated in his cross-examination that the family pension case for appellant Rajni Bala had been recommended to the A.G. Office, Punjab and there was reference of job given to son of the deceased on compassionate ground. Relying on ***United India Insurance Co. Ltd. vs. Patricia Jean Mahajan, 2002(3) R.C.R. (Civil) 534*** learned counsel urged that no amount paid as pension or towards any other benefit available to the claimants not arising out of the accident can be deducted while determining compensation under Section 166 of the Act of 1988.

Learned counsel further urged that the deceased was a government employee and had good future prospects of enhancement in salary but learned Tribunal awarded no amount on that count. The amount awarded towards loss of consortium and funeral expenses is also very less.

Undisputedly, deceased Parveen Chander was employed as Peon in the Office of Deputy Excise and Taxation Commissioner-cum-Joint Director, Jalandhar. The salary certificate of the deceased produced on record is Ex.P13 according to which he was getting salary of Rs.11,460/-. As per Ex.P14 the salary was enhanced in terms of the report of Pay Commission. As per the revised scale, the officials getting basic pay of

Rs.4020/- were allowed basic pay of Rs.8820/-. Accepting the testimony of PW1 Rajni and PW3 Balbir Kumar, who deposed that Parveen Chander was drawing salary of Rs.16,000/- per month in the revised pay scale at the time of his death, learned Tribunal assessed the income of the deceased as such i.e. Rs.16,000/- per month. Though the deceased was a government employee and the claimants got his salary certificate proved on record but for the reasons best known to them the date of birth of the deceased as mentioned in the service record was not got proved. The claimants alleged that the deceased was 43 years old when he died but in the postmortem report his age was mentioned as 50 years. The official record pertaining to age of the deceased having been withheld, learned Tribunal rightly took the age of the deceased as 50 years as was mentioned in the postmortem report.

The deceased is survived by a widow, a minor son, a married daughter and a major son (respondents No.5 and 6). The major daughter and son were not impleaded as claimants. The amount awarded as compensation was held to be equally shared by the claimants only and nothing was awarded to the major son and daughter. The major son and daughter have also not come up in appeal against disbursement of the compensation amount by learned Tribunal. Meaning thereby that the daughter having been married and the son being self dependent were not the dependent of the deceased. In view of the matter, there being two claimants, deduction of 1/3rd to the income of the deceased towards his personal and living expenses should have been done.

The deceased being 50 years old and had eight years service to his credit. In ***<u>Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77,</u>*** it has been laid down by Hon'ble Apex Court that where the deceased had a permanent job and was below 40 years an addition of 50% of the actual salary is to be added towards future prospects; where the deceased is below 40-50 years addition should be of 30%; but where the deceased is more than 50 years no addition should be made. The law laid down in ***<u>Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170</u>*** is as under:-

> *"In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."*

In the case in hand, neither the deceased was self employed nor was on fixed wages. The age of superannuation was 58 years. As such, neither in view of the law laid down in Sarla Verma's case (supra) nor as per the ratio of Rajesh and others' case (supra) any addition to the actual income of the deceased towards future prospects could be allowed.

Since the deceased had eight years of service to his credit, the claimants are entitled to complete salary for the said eight years. However, at the age of 58 years the deceased would have been entitled to pension and the loss of dependency at the said age has to be calculated as per the amount of pension to which the deceased would be entitled to. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income of the deceased (in Rupees)		Rs.16,000/-
2.	Actual age of the deceased		50 years
3.	Annual dependency		2/3rd of Rs.16,000/- x 12 = Rs.1,28,000/-
4.	Multiplier as per Sarla Verma and others' case (supra) (to be broken into 2 parts if multiplier spills over the age of 58 years. Before + after superannuation.		13 (8+5)
5.	Compensation for full salary period i.e. upto 58 years		Rs.10,24,000/-
6.	Compensation for pension period i.e. after 58 years		Rs.3,20,000/-
7.	Total compensation (column No.5 + 6)		Rs.13,44,000/-

In addition to the amount of Rs.13,44,000/- calculated towards dependency, the amount of Rs.2000/- awarded under the funeral expenses is enhanced to Rs.25,000/- whereas the amount of Rs.5000/- awarded towards loss of consortium to appellant-Rajni is enhanced to Rs.1,00,000/-. The amount of Rs.1,00,000/- awarded by learned Tribunal on account of loss of guidance and love and affection is just and adequate.

Accordingly, the appeal FAO No.783 of 2012 filed by appellants-Rajni and others is partly allowed and the award dated

20.12.2010 passed by learned Tribunal is modified. The enhanced compensation of Rs.6,94,000/- shall be paid to the appellants-claimants 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. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal. The recovery right given to the insurance company shall remain the same.

(SNEH PRASHAR)
JUDGE

11.04.2016.
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