IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.4355 of 2011 (O&M)
Date of decision: 08.01.2016

Oriental Insurance Company Ltd.

...Appellants

Versus

Pooja Rani and others

...Respondents

(2) FAO No.4850 of 2012 (O&M)

Pooja Rani and others

...Appellants

Versus

Rajesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. B.S. Brar, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for Insurance Company.

<u>JITENDRA CHAUHAN, J. (Oral)</u>

The instant two appeals are being disposed of by this single judgment, having arisen out of the impugned Award dated 23.02.2011, passed by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal').

<u>CM-16194-CII-2011 in FAO-4355-2011</u>

2. For the reasons mentioned in the application, the same

is allowed and the verification report of the driving licence No. 19537/AG/04 dated 24.11.2004, is taken on record as Annexure A-2.

<u>Main appeals</u>

3. The brief facts of the case are that on 20.02.2009, deceased along with his mother, Darshani Devi and sister, Sunita Devi had gone to Kurukshetra on auto rickshaw of their neighbour Rajesh Kumar, to attend the death ceremony. When they were returning to the village, the driver at a high speed crossed the toll tax barrier. The claimants asked him to drive at slow speed but he paid no heed. When the auto rickshaw reached near Sandhir turn at about 5 pm, the respondent No.2 on seeing a motorcyclist applied brakes due to which the auto rickshaw got imbalanced. Deceased Sanjeev Kumar received multiple injuries and died on the spot.

4. At the outset, the learned counsel for the Insurance Company states that the driving license bearing No. 19537/AG/04 dated 24.11.2004, was found fake, as per report received from the Licensing Authority, Agra, therefore, the owner/driver cannot escape from his liability. He further contends that the learned Tribunal has gravely erred in applying the multiplier of 18 instead of 17 as the age of the deceased was more than 25 years at the time of accident.

5. Whereas, the learned counsel for the claimants submits

that the deceased died due to the sole negligence of the respondent-driver. As regards the quantum of compensation, the sole argument raised by the learned counsel is that the deceased was a photographer and had been earning Rs.10,000/- per month, whereas the learned Tribunal has wrongly assessed his income at Rs.4000/- per month. No compensation has been awarded by the learned Tribunal under the head of loss of love and affection. The compensation awarded by the learned Tribunal under other heads is also on the lower side.

6. I have heard learned counsel for the parties and minutely perused the paper book.

7. As regards the contention of learned counsel for the insurance company is concerned, it is proved from the report dated 13.04.2011, Annexure A-2, that the driving license bearing registration No. 19537/AG/04 dated 24.11.2004 was not validly issued by the office of RTO Agra. Therefore, the licence held by the driver in the instant case being fake and it is held that the driver was driving the vehicle without a driving licence in breach of the terms and conditions of the insurance policy.

In **National Insurance Co. Ltd**. Vs. **Geeta Bhat**, 2008 (3) R.C.R. (Civil) 44, Hon'ble the Apex Court has laid down as under:-

> *"13. We would, therefore, assume that the licence possessed by the 6th respondent, Gopal*

Singh was a fake one. Only because the same was fake, the same, having regard to the settled legal position, as noticed hereinbefore, would not absolve the insurer to reimburse the owner of a vehicle in respect of the amount awarded in favour of a third party by the Tribunal in exercise of its jurisdiction under Section 166 of the Motor Vehicles Act, 1988.

14. Nobody has appeared on behalf of the respondents despite service of notice.

15. We, therefore, are of the opinion that interest of justice shall be subserved if the appellant is directed to pay the awarded amount in favour of respondent Nos.1 to 5 with liberty to recover the same from the owner and the driver of the vehicle, respondent Nos.6 and 7 in an appropriate proceeding in accordance with law."

As a result of the above discussion, FAO No.4355 of 2011, preferred by the insurance company is allowed to the extent that it is awarded recovery rights over the owner/driver.

8. As far as the quantum of compensation is concerned, no document has come on record to show that the deceased, in fact, earned Rs.10,000/- per month. Therefore, the learned Tribunal has rightly assessed the income of the deceased as Rs.4,000/- per month. However, it is noticed that the learned Tribunal has not awarded any amount on account of future prospects. The deceased died at the age of 24. Therefore, keeping in view the law laid

down in ***Rajesh and others Vs.Rajbir Singh and others, (2013) 9 SCC 54***, an increase of 50% is awarded towards the future prospects. In this way, the amount of compensation under the head 'loss of dependency' would come to Rs.4,000/- + 50% X 12 X 18 X ¾ = 9,72,000/-, as against the amount of Rs.6,48,000/-.

9. From the perusal of the impugned award, it is made out that an amount of Rs.10,000/- has been awarded towards 'loss of consortium' and Rs.5000/-, for funeral expenses, which, in the opinion of this Court, are inadequate. Accordingly, the amount under the above heads is increased to Rs.1,00,000/- and Rs.25,000/-, respectively, in view of the law laid down in in ***Rajesh and others Vs.Rajbir Singh and others, (2013) 9 SCC 54.*** Further, the claimants-children of the deceased are also awarded Rs.1,00,000/-, for loss of love and affection, in equal shares.

10. In view of the above, the claimant-appellants are held entitled to the enhanced compensation of Rs.5,34,000/- [3,24,000 (enhancement under the head 'loss of dependency') + (Rs.90,000/- (enhancement under the head 'loss of consortium' payable to the widow only) + Rs.20,000/- (enhancement under the head 'funeral expenses') + Rs. 1,00,000/- for love and affection (payable to the children of the deceased in equal shares)], as indicated above, in the manner as prescribed in the impugned award, over and above

the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 8% per annum, from the date of filing the present appeal, till its realization. However, keeping in view the decision made in FAO No.4355 of 2011 (supra), the Insurance Company shall be liable to satisfy the award in the first instance with liberty to recover the same from the owner/driver.

11. However, considering the fact that the issue is pending consideration in Civil Appeal No. 2836 of 2015 arising out of SLP (Civil) No. 6016 of 2014 before the Hon'ble Apex Court, the disbursement of the amount under the head of future prospects shall be subject to furnishing adequate surety.

12. Consequently, FAO Nos.4355 of 2011 and FAO No.4850 of 2012 are partly allowed and the impugned award is modified to the extent indicated above.

The statutory amount deposited by the appellant-Insurance Company be placed at the disposal of the Tribunal for reimbursement.

08.01.2016 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**