IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 02.03.2016.

FAO No.1283 of 2012 (O&M)

Harbhajan Singh ....Appellant.

VERSUS

Mohinder Kaur and others ....Respondents.

WITH

FAO No.2004 of 2012 (O&M)

Mohinder Kaur ....Appellant.

VERSUS

Prem Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.K. Goel, Advocate
for the appellant (in FAO No.1283 of 2012) and
respondent No.2 (in FAO No.2004-2012).

Mr. R.K. Shukla, Advocate
for the appellant (in FAO No.2004 of 2012) and
respondent No.1 (in FAO No.1283 of 2012).

Mr. Subhash Goyal, Advocate
for respondent No.6 (in FAO No.1283 of 2012) and
respondent No.3 (in FAO No.2004 of 2012).

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SNEH PRASHAR, J.

The above captioned two first appeals had arisen from an award dated 15.09.2011 passed by Motor Accident Claims Tribunal, Patiala (for short, “the Tribunal”) in MACT Case No.33 of 2010 by virtue of which claimant-Mohinder Kaur, mother of deceased Jagdev Singh alias Jaggi, who lost his life in a vehicular accident, was awarded compensation. The respondent-Insurance Company was directed to pay the compensation amount but was given liberty to recover the same from the owner-insured. Both the appeals shall stand disposed of by this common judgment.

The facts are that Jagdev Singh @ Jaggi, aged about 21 years (since deceased) was going from Patiala to Nabha by means of his Max Pick up No.PB-11AP-8706 (for short, "Max Pick up) on 09.05.2010 at about 4:00 a.m. in the morning. Incidentally, Manpreet Singh son of Soma was following the Max Pick up as he too was going to Nabha by means of his Mohindra Max Trax No.PB-11AH-8562 (for short, "Mohindra Max"). On Patiala-Nabha road, the Max Pick up of Jagdev Singh was hit by a Truck bearing registration No.PB-12B-9485 (hereinafter referred to as "the offending truck") which came from the opposite direction in a very high speed and negligent manner. As an impact of the collision, the Max Pick up fell in the ditches. Jagdev Singh sustained serious head and other bodily injuries. The accident was witnessed by Manpreet Singh but the driver of the offending truck managed to fled away from the spot.

Jagdev Singh was taken to Rajindera Hospital, Patiala but his condition being serious he was referred to P.G.I., Chandigarh, however he succumbed to the injuries on the same day.

Appellant-Mohinder Kaur alongwith her husband Gurnam Singh and two sons Jagtar Singh and Harvinder Singh filed a petition invoking the provisions of 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation impleading driver, owner and insurer of the offending truck as respondents.

The respondents denied the accident and contested the petition but considering the evidence adduced by the parties, learned Tribunal came to the conclusion that the accident during which Jagdev Singh lost his life was result of rash and negligent driving of the offending truck by its driver Prem Singh. Since the Tribunal found that the driving licence held by respondent Prem Singh was fake and owner Harbhajan Singh had violated the terms and conditions of the insurance policy, the insurance company was not held liable to indemnify the insured. However, it being a case of third party claim, the insurance company was ordered to pay the compensation amount to the claimants on behalf of the insured and was given the liberty to recover the amount so paid from the owner-insured of the offending truck. Mohinder Kaur-mother of the deceased was considered to be the only dependent and was held entitled to the compensation.

Feeling dissatisfied with the quantum of compensation, appellant-Mohinder Kaur preferred FAO No.2004 of 2012. Harbhajan Singh-owner also feeling aggrieved filed FAO No.1283 of 2012 impuging the award.

The submissions made by Mr. J.K. Goel, learned counsel for appellant-Harbhajan Singh (in FAO No.1283 of 2012), Mr. R.K. Shukla, learned counsel for appellant-Mohinder Kaur (in FAO No.2004 of 2012) and Mr. Subhash Goyal, learned counsel for respondent-insurance company have been heard and record perused.

To begin with, learned counsel for appellant Mohinder Kaur argued that Jagdev Singh @ Jaggi was registered owner of Max Pick up as is proved by the registration certificate Ex.P7. He had purchased the said vehicle by taking a loan from Mahindra Finance. He held a valid driving licence and with the help of his own vehicle was engaged in the work of transporting goods and was earning around Rs.15,000/- per month. After paying installment of the loan, he used to give financial support to his family members to the extent of Rs.10,000/- per month but learned Tribunal gravely erred in assuming that he was a daily wager and took his income as Rs.3400/- per month.

Learned counsel further argued that the multiplier of '9' applied by learned Tribunal is also wrong as according to the age of the deceased '18' was the appropriate multiplier. No amount was awarded to the mother for loss of love and affection and the amount of Rs.5,000/- each awarded on account of funeral expenses and loss of estate are also on a very low note.

In Para No.19 of the Award, it was noticed by learned Tribunal that the driving licence issued in the name of the deceased had been placed on record. The registration certificate Ex.P7 proved that the deceased was owner of Max Pick up. It is also an admitted fact that the deceased was driving the Max Pick up when the accident took place. Learned counsel for the claimants could not refer to any evidence to support his argument that the deceased after paying installment of the loan taken for purchase of the Max Pick up was contributing Rs.10,000/- towards maintenance of his family members. In fact, no substantive or reliable evidence was led to prove the income of the deceased. At the same time, the facts that the deceased owned a Max Pick up and was a driver himself, do indicate that he was a skilled worker. The accident took place in 2010. Considering all aspects, the income of the deceased is assessed as Rs.5,000/- per month.

Perusal of the award shows that no amount was added to the income for computing future prospects. Following the ratio of ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** since the deceased was a young unmarried boy, there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which learned Tribunal failed to allow. Accordingly, the amount comes to Rs.7500/- (Rs.5000/- monthly income + Rs.2500/- addition towards future prospects). Relying on the law laid down by Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77,*** learned Tribunal rightly held that the father of the deceased and his brothers were not his dependents and only the mother appellant-Mohinder Kaur was dependent on the earnings of the deceased. Accordingly, 50% of the income was rightly deducted towards personal and living expenses of the deceased. After deduction the annual income of the deceased comes to Rs.45,000/- (Rs.3750 x 12).

Learned Tribunal applied the multiplier of '9' as per the age of appellant-Mohinder Kaur whereas the age of the deceased should be the basis for selection of a multiplier as per the law laid down in ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(2) W.L.N. (SC) 113***. As such, the multiplier of '18' would be the appropriate multiplier. Accordingly, the compensation payable to the appellant-Mohinder Kaur is calculated as under:-

1.	Monthly income of the deceased (in Rupees)		Rs.5000/-
2.	Actual age of the deceased		21 years
3.	Increase in future income as per Rajesh and others case (supra)		Rs.2500/-
4.	Annual dependency		1/2 of Rs.7500 x 12 = Rs.45,000/-
5.	Multiplier		18
6.	Total		Rs.8,10,000/-

In addition to the amount of Rs.8,10,000/- calculated towards dependency, following the ratio in Rajesh and others' case (supra) the amount of Rs.5000/- awarded under the head of funeral expenses is enhanced to Rs.25,000/- and Rs.50,000/- is awarded to appellant-Mohinder Kaur for loss of love and affection. The amount of Rs.5000/- awarded under loss of estate is adequate. In the above premise, the appellant-Mohinder Kaur is held entitled to total compensation of Rs.8,90,000/-. The rate of interest allowed by learned Tribunal shall remain the same.

As regards, the issue of liability interse the insurer and the owner/insured, learned counsel representing appellant Harbhajan Singh (owner of Mohindra Max) argued that the driving licence Ex.R1 of driver Prem Singh was a genuine document. Harbhajan Singh at the time of engaging the driver had got the genuineness of the driving licence verified. Learned Tribunal was wrong in accepting the report Ex.R7 and Ex.R8 of Licensing Authority, Mathura as sufficient and authentic proof for coming to the conclusion that the driving licence Ex.R1 of Prem Singh was a fake document. The insurance company did not examine the dealing clerk or some authorized representative of the licensing authority to establish that the driving licence Ex.R1 had not been issued by the concerned office. The onus of proving the objection that the licence of Prem Singh was not valid and effective was squarely on the insurance company. Since it failed to lead cogent and reliable evidence, it could not be absolved of the liability to indemnify the insured.

The findings of learned Tribunal in respect of the driving licence Ex.R1 of driver Prem Singh and regarding the reports relating to verification of the licence received by the insurance company at its own level Ex.R7 and Ex.R8 and the final report received by the Tribunal directly from the licensing authority in response to the query sent by the Tribunal vide order dated 27.08.2011, are as under:-

> "*I have considered all the aspects of the case. The respondent no.1 has adduced into evidence, the copy of the driving licence Ex.R1, which purports to have been issued by the Licencing Authorities, Mathura in favour of Prem Singh son of Babu Singh. The driving licence seems to have been issued by the Licencing Authorities, Mathura bears No.1742/MTR/ 1994 issued on 20.8.94. The same is valid from 17.2.2009 to 16.2.2012. This document was sent for verification to the Licencing Authorities, Mathura. The first report was received by the Insurance Company at its own level, which is Ex.R7. This report provides that DL No.1742/MTR/ 1994 containing the details of Prem Singh is*

> *fake and on this serial number, the licence was issued to Bharat Arora son of Saudagar Lal. The second report is the one made by the Licencing Authorities, Mathura under its own stamp and signatures issued to the Insurance Company. The same is Ex.R8. The same confirms the original report to the effect that the licence at Sr. No.1742/MTR/94 was issued to Bharat Arora son of Saudagar Lal. The same has not been issued to Prem Singh son of Babu Singh. A final report has been received by the Tribunal on its own accord. The Tribunal has moved to the Licencing Authorities, Mathura vide order dated 27.8.2011. The report dated 1.9.2011 had been received. This report again confirmed the same fact that the driving licence at Sr. No.1742/MTR/94 has been issued by the authorities in favour of Bharat Arora son of Saudagar Lal and no licence has been issued in the name of Prem Singh son of Babu Singh from 17.2.2009 to 16.2.2012. All these pieces of evidence now thoroughly confirmed the fact that the Licencing Authorities, Mathura have not issued any driving licence in favour of Prem Singh and it is to be concluded in the ultimate analysis that the driving licence Ex.R1 is a fake document."*

Learned counsel for appellant-Harbhajan Singh failed to demonstrate any misreading or misappreciation of the evidence available on record by learned Tribunal. There is also no adversity or perversity in the findings. There were three separate reports with regard to the verification of the driving licence Ex.R1 of driver Prem Singh on the record and all three were consistent and crystal clear. The licensing authority reported directly to the Tribunal that the driving licence Ex.R1 was a fake document. Relying on the rule laid down in ***National Insurance Co. Ltd. vs. Swaran Singh, 2004 A.C.J. 1 (SC)*** and ***Oriental Insurance Co. Ltd. vs. Prithvi Raj, 2008 ACJ 733,*** learned Tribunal rightly directed the insurance company to first pay the compensation amount to the claimant and then recover the amount so paid from the owner-insured.

Accordingly, the appeal FAO No.1283 of 2012 filed by appellant Harbhajan Singh is dismissed whereas the appeal FAO No.2204 of 2012 filed by appellant-Mohinder Kaur is partly allowed and the award dated 15.09.2011 passed by learned Tribunal is modified. Appellant-Mohinder Kaur is held entitled to enhanced compensation of Rs.6,96,400/- in addition to the amount of Rs.1,93,600/- already awarded by learned Tribunal. The enhanced amount of compensation shall be deposited by the respondent-insurance company within 45 days from the date of receipt of certified copy of this judgment failing which appellant-Mohinder Kaur 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 insurance company shall have the liberty to recover the amount paid from owner-insured.

(SNEH PRASHAR)
JUDGE

02.03.2016.
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