IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

XOBJC-76-CII of 2008 in/and
FAO No. 1726 of 1999
Date of Decision : 26.09.2016

National Insurance Company Ltd. ....Appellant

Versus

Raj Rani and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.M. Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. G.S. Bawa, Advocate
for respondents no. 1 to 7-corss-objectors.

Ms. Ramandeep, Advocate
for Mr. Sumeet Goel, Advocate
for respondent no. 8.

Surinder Gupta, J.

Appeal filed by Insurance Company and cross-objections filed by claimants-respondents no. 1 to 7 have been taken up together for disposal as both arise out of award dated 17.04.1999 passed by Motor Accident Claims Tribunal, Sirsa (later referred to as 'the Tribunal') whereby claimants Raj Rani and others were allowed compensation of ₹2,40,000/- for death of Rama Nand (later referred to as 'the deceased'), husband of claimant no. 1-Raj Rani, father of claimants no. 2 to 5 and son of claimants no. 6 and 7 on 11.11.1994 in a motor vehicle accident with truck bearing registration no. HR-24-8576 (later referred to as 'the offending vehicle').

2. Appellant-National Insurance Co. Ltd., insurer of the offending vehicle has challenged the award claiming recovery rights against owner of offending vehicle as respondent no. 8-Ganga Ram, who was driving the

offending vehicle at the time of accident, was not possessing a valid driving licence.

3. Claimants in their cross-objections have sought enhancement of amount of compensation.

4. The detailed facts relating to accident are being skipped for the sake of brevity as finding of the Tribunal that accident had taken place due to rash and negligent driving of the offending vehicle by its driver is not in issue in this appeal.

5. The Tribunal allowed compensation of ₹2,40,000/- to claimants, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Rama Nand
(ii)	Age of the deceased	Between 28 to 30 years
(iii)	Income of the deceased	₹2500 per month
(iv)	50% of (iii) deducted towards personal expenses	(₹2500-₹1250)= ₹1250 per month
(v)	Amount of dependency after applying the multiplier of 16	(₹1250X12X16)= ₹240000
	Total	**₹240000**

ARGUMENTS OF LEARNED COUNSEL FOR THE APPELLANT-INSURANCE COMPANY

6. Learned counsel for the appellant-Insurance Company has argued that driving licence of respondent no. 8-Ganga Ram was proved on record as Ex. R-1. This driving licence was issued by Licencing Authority, Dehradun. Appellant examined A.K. Gupta, Senior Clerk in the office of Licencing Authority, Dehradun as RW-1, who proved that this driving licence was never issued in favour of Ganga Ram. The date of issuance of

this driving licence is 10.03.1986. On 10.03.1986, their office had not issued any driving licence in favour of any person. The statement of this witness shows that licence (Ex. R-1) was fake. The Tribunal has committed error while declining to grant recovery rights to insurer for the breach of terms and conditions of insurance policy.

7. Perusal of award shows that the Tribunal while declining recovery rights to insurer has observed that it has failed to prove that insured was guilty of any breach of term and condition of the policy. It had not called owner and driver of the offending vehicle to produce original licence.

8. The licence of driver of the offending vehicle was proved on file by ASI Shish Ram, who was investigating officer of criminal case regarding this accident registered vide FIR No. 285 dated 11.11.1994 at Police Station Kalanwali. He has stated that Ex. R-1 is the correct copy of licence, which was renewed upto 08.03.1992. He has further stated that this licence has been issued by Licencing Authority, Dehradun. Insurer of the offending vehicle called the concerned official from Licencing Authority, Dehradun, who has stated that licence bearing no. 2774, which is the number of licence (Ex. R-1) was issued to one Hari Lal Singh son of Thapari Ram, resident of village Kalyanpura, *Tehsil* Madhopur, District Sikar, Rajasthan c/o 56 APO. He has also stated that on 10.03.1986, no licence was issued by the Licencing Authority, Dehradun. As original record of the case is not available and to verify the above fact, file of criminal case was called vide order dated 11.03.2016, which reads as follows:-

> *"As per the report, original file of the case has got burnt, alongwith file of the appeal.*

Learned counsel for the appellant raised two points regarding the driving licence of the driver of the offending vehicle; firstly, it was not issued by the Licencing Authority, Dehradoon and secondly, it was valid only upto 8th March, 1992.

On perusal of the award, it transpires that a case bearing FIR No.284 dated 11th November, 1994 was registered at PS Kalanwali, for the offence punishable under Sections 279, 337, 304-A of IPC. Challan was presented in that case. Original driving licence was taken into possession in that case and the Ahlmad of Court, where the challan was presented, had produced the copy of the driving licence on record. It will be appropriate to call the original file of that case from the record room of District & Sessions Judge, Sirsa. Record of case bearing FIR No.284 dated 11th November, 1994, registered at PS Kalanwali, for the offence punishable under Sections 279, 337, 304-A of IPC, decided by SDJM, Dabwali, be summoned.

List on 05.05.2016."

9. On receipt of file of criminal case no. 175-1 of 1994 decided on 05.11.1999 by Sub Divisional Judicial Magistrate, Dabwali, I find that original driving licence no. 2774 of 1986 issued to respondent no. 8-Ganga Ram was on file. It was issued by Licencing Authority, Dehradun and was valid from 10.03.1986 to 09.03.1989 and was then renewed from 09.03.1989 to 08.03.1992. It is evident from perusal of this driving licence that it was not renewed after March, 1992. The accident took place on 11.11.1994 and this licence was not valid on that day. Secondly, in view of statement of RW-1 A.K. Gupta, Senior Clerk in the office of Licencing Authority, Dehradun, this licence had never been issued in favour of Ganga Ram, which shows that it was not a valid driving licence. The insurer, as such, has discharged the onus placed on it by proving that driving licence (Ex. R-1)

was not valid. Owner and driver of the offending vehicle have not come up with any other driving licence to make out that Ganga Ram possessed a valid driving licence on the date of accident. The Tribunal while holding the insurer liable to make payment of compensation amount has observed that it has failed to discharge the burden placed on it that owner of the offending vehicle breached any term and condition of the insurance policy. In view of the facts discussed above, driver of the offending vehicle was not holding any licence authorizing him to drive vehicle. Licence (Ex. R-1) had already expired in the year 1992. On the date of accident i.e. 11.11.1994, he was not holding any driving licence, genuine or fake, so as to exonerate owner of the offending vehicle with the observation that driver was holding a driving licence and it was not for the owner to verify from licencing authority whether it was genuine and valid.

10. In view of my above discussion, finding of the Tribunal on issue no. 4 is reversed. The insurer will be primarily liable to pay amount of compensation to claimants-respondents no. 1 to 7 and shall have right to recover the same from owner of the offending vehicle.

QUANTUM OF COMPENSATION

11. Learned counsel for cross-objectors/claimants has argued that as per parameters laid down in the case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another,*** ***(2009) 6 SCC 121***, multiplier applicable for the deceased in a motor vehicle accident, who was in the age group of 26 to 30, is 17 while the Tribunal has applied multiplier of 16. Claimants are also entitled to addition in income of the deceased as per observation of Apex Court in case of ***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54*** and ***Munna Lal Jain and others*** ***vs.*** ***Vipin Kumar Sharma and***

others*, *2015 (3) RCR (Civil) 447. Claimants are entitled to compensation towards loss of consortium for wife, loss of love and affection, care and guidance for minor children and loss of estate, love and affection for parents of the deceased apart from funeral expenses, which has not been awarded by the Tribunal. While computing amount of dependency, Tribunal has applied 50% deduction towards personal expenses of the deceased, which as per norms laid down in ***Sarla Verma's case (supra)*** is $1/4^{th}$.

12. Learned counsel for the appellant-Insurance Company has argued that the accident took place in the year 1994, when income of a daily wager was not more than ₹1500/- per month. The Tribunal has assessed income of the deceased as ₹2500/- per month, as such, the Tribunal has already taken income of the deceased on higher side. The compensation, keeping in view the price index prevailing in the year 1994, is just and reasonable and calls for no further enhancement.

13. While assessing income of the deceased, the Tribunal has taken note of the fact that the deceased was a meat seller and was holding a meat shop licence. Wife of the deceased has stated that he was earning ₹100/- to ₹150/- per day but no documentary evidence regarding income of the deceased came on record. A person having annual income of ₹35000/- was required to pay income tax in the financial year 1994-95 and assessment year 1995-96. Income tax slab for the financial year 1994-95 was enhanced from ₹30,000/- to ₹35,000/-. Tribunal took monthly income of the deceased as ₹2500/- without there being any cogent and convincing evidence, which is on higher side. Keeping in view that daily wager at that point of time could earn around ₹1500/- to ₹1800/- per month, monthly income of the deceased is assessed as ₹1800/-.

14. As per observations of Apex Court in ***Rajesh's case (supra)*** and ***Munna Lal Jain's case (supra)***, claimants are entitled to 50% addition in income of the deceased. Multiplier applicable to this case is 17 and deduction towards personal expenses of the deceased can be taken as 1/4th as per observation in ***Sarla Verma's case (supra)***. Claimants are also entitled to compensation towards loss of consortium for wife, loss of love and affection, care and guidance for minor children and loss of estate, love and affection for parents of the deceased, which, keeping in view the fact that accident took place in the year 1994, is quantified as ₹25000/- under each head besides ₹5000/- towards funeral expenses,.

15. In view of above, the amount of compensation to which claimants are entitled, is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Age of the deceased	Between 28 to 30 years
(ii)	Income of deceased	₹1800 per month
(iii)	50% of (ii) added towards future prospects	(₹1800+₹900)= ₹2700 per month
(iv)	1/4th of (iii) deducted as personal expenses of the deceased	(₹2700-₹675)= ₹2025 per month
(v)	Amount of dependency after applying multiplier of 17.	(₹2025X12X17) = ₹413100 per annum
(vi)	Loss of consortium for wife	₹25000
(vii)	Loss of love and affection for minor children	₹25000
(viii)	Loss of estate, love and affection for parents	₹25000
(ix)	Funeral expenses	₹5000
Total		₹493100

16. As a sequel of my discussion above, cross-objections filed by

claimants-respondents no. 1 to 7 have merit and are accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Rama Nand is enhanced from ₹2,40,000/- to ₹4,93,100/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Amount of enhanced compensation shall be shared by claimants-respondents no. 1 to 7 as follows:-

(i)	Claimant no. 1-wife	=	40%
(ii)	Claimants no. 2 to 5 (children)	=	10% each
(ii)	Claimants no. 6 & 7 (parents)	=	10% each

17. In the event of demise of any of the claimants before or after passing of award, compensation of his/her share shall be paid to surviving claimants.

18. Appeal filed by Insurance Company is also accepted. Appellant-Insurance Company being insurer of the offending vehicle shall pay amount of compensation at the first instance by depositing the enhanced amount of compensation in bank accounts of claimants-respondents no. 1 to 7 or pay the same through demand drafts and may recover the compensation, so paid, from insured for breach of terms and conditions of insurance policy.

September 26, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No