IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5980 of 2011 (O&M)
Date of decision: 25.01.2016

New India Assurance Co. Ltd. ... Appellant

versus

Joginder Pal Kaur and others .... Respondents

2. FAO No. 1059 of 2012 (O&M)

Joginder Pal Kaur and others ... Appellants

versus

Harjinder Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Neeraj Khanna, Advocate for the petitioner.

Mr. R.K. Bansal, Advocate for respondent Nos. 1 to 3 &6.

Mr. Gaurav Sharma, Advocate for respondent Nos.4 & 5.

K.Kannan, J. (ORAL)

The appeal is at the instance of the Insurance company challenging the quantum of liability and the appeal in FAO No. 1059 of 2012 is for the claimant seeking for enhancement. The Tribunal has awarded the compensation of Rs. 48, 45,000/- taking note of the salary as Rs. 30,473/-.

I have seen through the documents filed and it reveals that the gross salary drawn by the deceased without deductions at the time of his death was Rs. 30, 473/-. I will allow for 30% increase as prospect of future increase and make uniform deduction of 15% as going towards the income tax. I will apply 1/4th deduction for personal consumption and take the extent of dependency at Rs. 25, 254.49. I will apply the multiplier of 14. I will also provide for Rs. 1,00,000/- for loss of consortium and Rs. 1,00,000/- for each one of the children and Rs. 50,000/- for loss of love and affection for the parent. I have provided for loss to estate at Rs. 10,000/- and Rs. 25,000/- towards funeral expenses. The total compensation will be Rs. 46, 27,755.16. To this extent, the amount already awarded is not required to be increased but would required to be scale down to the extend provided above. The various heads of compensation are tabulated as under:

Fatal	Date of accident	25.07.2010	
Age	42		
Occupation			
Claimants	Widow, 2 sons, mother		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income	38,315	30,473
2.	Add, % of increase, 30%/50% (less 15% tax)		39614.90 33672.66
3.	Deduction, 1/2, 1/3, **1/4,**	**1/4**	25,254.49
4.	Multiplicand	28750 x 12	3,03,053.94
5.	Multiplier	14	14
6.	Loss of dependence	48,30,000	42,42,755.16

7.	Medical Expenses		
8.	Loss of Consortium	10,000	1,00,000/-
9.	Loss of love and affection		2,50,000/-
10.	Loss to estate		10,000/-
11.	Funeral Expenses	5,000/-	25,000/-
	Total	48,45,000	46,27,755.16

As regards liability, I have seen the driving licence, it has originally authorized to drive LMV vehicle and a transport vehicle endorsement has been made that provides for validity for a period of 3 years from the year 2007 upto 16.10.2010 which means that there was a due currency of policy. The amended Central rules of the year 1999 provide only for a classification as transport vehicle licence and makes no distinction between the driver having light motor vehicle to have a transport vehicle endorsement as being disqualified to drive heavy transport vehicle. The transport vehicle endorsement itself does not give any restriction of licence to be only for 'light motor vehicle' used as a transport motor vehicle. The licence is effective to cover the action of the driver to secure indemnity for the insured. The liability cast on the insurer is, therefore, perfectly justified.

There is also a contention raised that the Insurance Company had called the owner to produce the permit and it was not done. Learned counsel makes reference to the judgment in National

Insurance Co. Ltd. Vs. Challa Bharathamma and others, (2004) 8 SCC 517 that considered the situation of an auto rickshaw being driven for hire but without a permit. The Court held that there had been an infraction of the terms of the policy. The infraction which the Court was examining was using a non-transport vehicle for the purpose of transport vehicle. It is the purpose of user that will cause infraction of the terms of the policy. Section 149 (2) (c) refers to a breach of condition of policy for a purpose not allowed by the permit. In the instant case, it was a goods vehicle and insured as such. There is no case that the vehicle was used for a purpose that was not meant by the terms of policy. As I have observed, the policy itself was to cover the risk for use as a goods vehicle. Therefore there was no question of the vehicle having put to use for different purpose than that for which the policy was issued. The judgment in Challa Bharathamma and others (supra) therefore, does not apply.

The award of the Tribunal stands modified to restrict the liability to Rs. 46, 27, 755.16 and the manner of distribution will be carried out proportionately to the manner already provided by the Tribunal.

The appeal by the Insurance Company is disposed of, making the modification as regards quantum as above and the appeal by the claimant for further enhancement stands dismissed.

25.01.2016 **(K.KANNAN)**
kv **JUDGE**

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