**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

(1)

FAO No.3602 of 2012 (O&M)
Date of Decision: August 16, 2016.

Kamaljit Kaur and others

..........APPELLANT(s).

VERSUS

Balwinder Singh and others

........RESPONDENT(s).

(2)

FAO No.4398 of 2012 (O&M)

New India Assurance Company Limited

..........APPELLANT(s).

VERSUS

Kamaljit Kaur and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Vivek Arora, Advocate
for the appellants in FAO-3602-2012 and
for respondents No.1 to 4 in FAO-4398-2012.

None for respondent No.2 in FAO-3602-2012
and for respondent No.6 in FAO-4398-2012.

Mr. Rajesh K. Sharma, Advocate
for respondent No.3 in FAO-3602-2012 and
for appellant in FAO-4398-2012.

****

SURINDER GUPTA, J.

The appeals captioned above have been taken up together for disposal as both arise from award dated 19.03.2012 passed in claim petition bearing MACT No.000071 of 04.05.2006 passed by Motor Accident Claims Tribunal, Chandigarh (later referred to as 'the Tribunal'). FAO No.3602 of

2012 has been filed by the claimants seeking enhancement of compensation awarded by the Tribunal while New India Assurance Company-insurer of the Canter bearing registration No.PB-04-2104 involved in the accident (later referred to as 'the offending vehicle') has filed FAO No.4398 seeking dismissal of the claim petitioner and setting aside the award passed by the Tribunal.

Before proceeding further, it will be relevant to take note of the fact that an appeal was also filed by M/s Sham Industries, owner of the offending vehicle bearing FAO No.1646 of 2013, which was dismissed as withdrawn. As per the findings of the Tribunal on issue No.2, insurance company was given right to recover the compensation amount against owner of the offending vehicle M/s Sham Industries.

The case of the claimants, in brief, is that on 08.10.2005, Navtej Singh, husband of claimant No.1, father of claimants No.2 and 3 (both minors) and son of claimant No.4-Avtar Singh met with an accident with the offending vehicle which was being driven in a rash and negligent manner by respondent No.1 and received serious grievous injuries. At the time of accident, deceased was on his motorcycle with his father Avtar Singh and was going from Moga to Jalalabad East. The deceased received injuries while his father fell on the kacha portion of the road and got saved. The deceased was immediately shifted to Amrit Hospital, Moga by Mohinder Singh, who came to the spot, from where he was referred to D.M.C. Hospital, Ludhiana. He succumbed to the injuries there on 21.10.2005.

Respondent No.2 denied the averments of the claimants while respondent No.1, driver of the offending vehicle did not appear to contest the claim petition, as such, was proceeded against ex parte.

New India Assurance Company, insurer of the offending vehicle contested the claim with the plea that driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident and there was breach of terms and conditions of the insurance policy.

Pleadings of the parties led to the framing of issues as follows:-

(1) Whether Navtej Singh died due to rash and negligent driving of Canter No.PB-04-2104 by its driver respondent No.1? OPP

(2) To what amount of compensation, the claimants are entitled and from which of the respondents? OPP

(3) Whether respondent No.1 was not having a valid driving licence at the time of accident? OPR

(4) Relief.

On appraisal of evidence, the Tribunal recorded finding on issue No.1 to the effect that the accident was caused by driver of the offending vehicle due to his rash and negligent driving. It allowed the compensation of ₹31,54,960/-, which was computed as follows:-

(i) Income of the deceased	: ₹3,50,004 p.a.
(ii) Income after tax deductions	: ₹3,50,004-₹56161 =₹2,93,903.
(iii) Deduction towards personal expenses	: 1/3rd i.e. ₹97,968.
(iv) Age of the deceased	: 33 years
(v) Multiplier applied	: 16 (2,93,903X16) = ₹31,34,960.
(vi) Loss of estate	: ₹5000
(vii) Loss of consortium	: ₹5000
(viii) Funeral expenses	: ₹10000
Total	: ₹31,54,960/-.

Learned counsel for the claimants has argued that the deceased remained admitted in the hospital for about 13 days, after the accident.

Though the claimants could not produce bills of medical expenses but it is a fact which could be taken note of that he was initially taken to Amrit Hospital, Moga and referred to Dayanand Medical College and Hospital, Ludhiana where he remained admitted till his demise on 21.10.2005. The claimants have spent on transportation, medicines, hospital expenses and attendant during the period the deceased remained admitted in the hospital. The claimants are entitled to compensation on all these score even without there being any documentary evidence on record. While referring to the observations of Apex Court in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54,*** he has argued that claimants are also entitled to addition of 50% in the income of the deceased, who was working as Executive Distribution with NDTV, towards his future prospects. The amount of compensation awarded towards loss of consortium, loss of estate, funeral expenses is also on lower side and the minor children of the deceased are also entitled compensation for loss of love and affection, care and guidance to the tune of ₹1 lac.

Learned counsel for respondent-insurance company has argued that the deceased was a probationer, as such, is not entitled to any addition in his income towards future prospect. It is a strange case, where no medico-legal report of the deceased was got conducted and no FIR was lodged till 21.10.2005. The matter was reported to the police vide FIR no.298 dated 22.10.2005. The driver of the offending vehicle was not arrested and was got declared proclaimed offender. Father of the deceased, an alleged eyewitness, was not examined by the claimants, who relied on statement of Swaran Singh, another eyewitness. He has further argued that as per provisions of Section 134 (c)(2) of Motor Vehicles Act, the owner of the vehicle is required to furnish information about the accident and the name of driver and particulars of his driving licence, which admittedly were not furnished in this case. The Tribunal while recording findings on issue No.3 has wrongly held that the onus was on the insurance company to prove that the driver of the offending vehicle was not having a valid driving licence.

Firstly, I take the plea raised by the insurance company, challenging the findings of Tribunal on issue No.1 that the accident is proved to have been caused by respondent No.1 due to his rash and negligent driving. There is no denial of the fact that the deceased remained admitted in hospital at Ludhiana till 21.10.2005 on which date, he breathed his last. The priority before the family was to take care of the injured and to make all attempts to save him instead of rushing to the police at Moga. Surjit Singh, Sub Inspector had investigated the case pertaining to FIR No.298 dated 22.10.2005 for the offences punishable under Sections 279 and 304-A IPC and presented the challan against Balwinder Singh, driver of the offending vehicle. The mere fact that the police could not arrest Balwinder Singh, who was declared proclaimed offender, in no manner, reflect on the veracity of the version of the claimants. This fact is not disputed that respondent No.1 was employed with respondent No.2, owner of the offending vehicle. The medical record proved on file shows that the deceased received injuries in a road side accident and ultimately succumbed to those injuries. PW5 Swaran Singh, eyewitness of the occurrence has described the manner in which the accident took place. The injured was rushed by him to Amrit Hospital, Moga. The Tribunal has held that despite his lengthy cross-examination, nothing could be derived to disbelieve his testimony. Avtar Singh aged 72 years, if had not appeared as witness before the Tribunal, was no reason to doubt the statement of PW5 Swaran Singh and the Tribunal has rightly placed reliance on his statement.

Though there is no MLR but the other medical record was produced regarding the injuries suffered by the deceased which include death summary of the deceased, his post-mortem report and death certificate. On perusal of these documents, the Tribunal observed that the deceased was admitted in D.M.C. Hospital, Ludhiana with head injuries on 08.10.2005 and remained admitted there till his death i.e. 21.10.2005. The evidence on record is sufficient to corroborate the statement of PW5 Swaran Singh and to prove that the deceased died because of the injuries received by him in a road side accident with the offending vehicle. The finding of Tribunal on issue No.1 suffers from no infirmity on this score and is affirmed.

It is also proved on record that deceased remained admitted in D.M.C. Hospital, Ludhiana for 13 days till 21.10.2005. During this period, the claimants have spent on his treatment, hospital expenses, care, attendant, transportation, medicines etc. Though no bill to this effect has come on record but the expenses can be visualised. The Tribunal has committed error while ignoring this fact and not allowing compensation on this score. Keeping in view the above facts and circumstances of the case, a compensation of ₹50,000/- in lump sum is awarded on all the above referred heads.

As per the observations of Hon'ble Apex Court in case of ***Rajesh and others Vs. Rajbir and others (supra)*** followed in case of ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3)***

RCR (Civil) 447, the claimants are also entitled to 50% addition in the income of the deceased towards future prospects. The mere fact that the deceased was a probationer, is no reason to decline the addition in his income towards future prospects. There is no evidence that deceased was not performing his duties to satisfaction of his employer. Taking a positive view, it can be assumed that the deceased would have cleared his probation and risen high in life.

Argument of learned counsel for the appellant that finding recorded by the Tribunal on issue No.3 that the insurance company has failed to discharge its liability that respondent No.1 was not having a valid driving licence at the time of accident is not inconsonance with the provisions of Section 134(c)(2) is without any merits. Firstly, there is no plea raised in the written statement that respondent No.2 has not complied with the provisions of Section 134 of Motor Vehicles Act. Even otherwise, onus to prove the defence available to the insurance company under Section 149 (2) Motor Vehicles Act, was on the insurance company. The Tribunal has rightly observed that merely because respondent No.1 is ex parte, does not absolved the insurance company from its onus to prove that respondent No.1 was not having a valid driving licence at the time of accident.

As already settled by Hon'ble Apex Court in a catena of judgments, the claimants are entitled to compensation under the heads of loss of consortium for the wife; loss of love and affection, care and guidance for minor children and loss of estate for father of the deceased. Keeping in view the fact that accident is of year 2005, claimants are allowed compensation of ₹75,000/- under each head mentioned above.

As a sequel of my discussion above, the appeal filed by the insurance company i.e. FAO No.4398 of 2012 has no merits and is dismissed, while the appeal filed by the claimants i.e. FAO No.3602 of 2012 has merits and is allowed. The claimants are entitled to enhanced compensation, which is re-assessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹350004 per annum
(ii)	Income after deducting income tax	₹350004-₹56161 =₹293903
(iii)	50% of (ii) above to be added as future prospects	(₹293903+ ₹146951)= ₹440854
(iv)	Income after deducting income tax on additional income @ 10%	₹440854-₹14695= ₹426159
(v)	1/3rd of (iii) deducted as personal expenses of the deceased	(₹426159-₹142053) = ₹284106 per annum
(vi)	Compensation after multiplier of 16 is applied	(₹284106X16)= ₹4545696
(vii)	For loss of consortium	₹75000
(viii)	For loss of love and affection, care and guidance to minor children	₹75000
(ix)	For loss of estate	₹75000
(x)	Funeral and transportation expenses	₹10000
(xi)	Hospital, transportation, medicines and attendant expenses	₹50000
Total		₹4830696 rounded off ₹48,30,700/-

The award of the Tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹31,54,960/- to ₹48,30,700/- for death of Navtej Singh. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the petition till actual realization. The amount of enhanced compensation along with interest shall be apportioned between the claimants as follows:-

1. Mrs. Kamaljit Kaur, widow : 30%
2. Master Navjas Singh, minor son : 30%
3. Baby Rashmeet Kaur, minor daughter : 30%
4. Avtar Singh, father : 10%

Respondent No.3-insurance company will deposit the share of appellants-claimants in their bank accounts or pay the same through demand drafts, however, it has right to recover the same from the insured i.e. owner of the offending vehicle. The share of minors Master Navjas Singh and Baby Rashmeet Kaur-appellants No.2 and 3, who as per their age given at the time of filing of the petition are still minor, will be deposited in some nationlized bank as fixed deposits in their names till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minor claimants as required at the time of deposit of the amount and the minor claimants shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. In case of demise of any of above claimant(s), his/her share of compensation shall be apportioned equally amongst other surviving claimants. The claimants shall also be entitled to costs of this appeal.

(SURINDER GUPTA)
JUDGE

August 16, 2016.
Sachin M.

√
Whether speaking/reasoned: ***Yes/No***
√
Whether Reportable: ***Yes/No***