IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : 30.11.2016

1. **FAO No. 2162 of 2015**

New India Assurance Company Ltd.
................Appellant

Versus

Shashi Bala and others
.................Respondents

2. **FAO No. 7158 of 2015** ...

Shashi Bala and others
................Appellants

Versus

Sanjeev Kumar and others
.................Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Harsh Aggarwal, Advocate
for the appellant in FAO No. 2162 of 2015

Mr. Neeraj Khanna, Advocate
for the appellants in FAO No. 7158 of 2015 and
respondent Nos. 1 to 5 in FAO No. 2162 of 2015

Mr. Sandeep Verma, Advocate
for respondent Nos. 6 and 7 in FAO No. 2162 of 2015 and
for respondent Nos. 1 and 2 in FAO No. 7158 of 205.

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REKHA MITTAL, J. (ORAL)

This order will dispose of FAO No. 2162 of 2015 titled "New India Assurance Company Ltd. Versus Shashi Bala and others" and No. 7158 of 2015 captioned "Shashi Bala and others Versus Sanjeev Kumar and others", as these have emerged out of the same award dated 20.12.2014 passed by the Motor Accident Claims Tribunal, Panchkula (in short 'the Tribunal') whereby compensation has been awarded in favour of Smt. Shashi Bala and others in regard to death of Ramesh Kumar in a motor vehicular accident that took place on 10.4.2013 in the area of Sunam.

The Tribunal assessed income of the deceased at Rs.14,500/- i.e. Rs.11,500/- as salary from the firm M/s Ralla Ram Joginder Lal Jain, Sunam and Rs.3,000/- per month by selling paper bags. A multiplier of 13 and deduction to the extent of 1/4th for personal expenses was applied besides allowing addition of 30% for future prospects to compute loss of dependency at Rs.22,05,528/-, in addition, an amount of Rs.1 lakh for loss of love and affection, funeral and last rites expenses etc., has been awarded making total compensation to the tune of Rs. 23,05,528/- payable with interest @ 6% per annum from the date of petition till realisation.

The parties shall be referred to as the 'insurance company', 'the claimants' and ' the insured', respectively, for the sake of convenience.

Counsel for the insurance company has assailed the award primarily on two grounds. The first submission made by counsel is that the insurance company examined a witness from Licensing Authority, Una, Himachal Pradesh and he proved that license possessed by driver of the offending vehicle was not issued by the said authority, sufficient to prove that the driver did not possess a valid driving license at the time of occurrence, therefore, the insurance company is entitled to be exonerated of its liability to pay compensation. In the alternative it is urged that the insurance company may be allowed recovery rights against the insured after satisfying the award towards the claimants.

Counsel for the insurance company has further challenged findings of the Tribunal qua income of the deceased at Rs.14,500/-. It is argued that statement of Lakshvir Jain PW-1 is not sufficient to establish that the deceased was working as a salesman with M/s Ralla Ram Joginder Lal Jain, much less at the salary of Rs.11,500/-. To bring home his contention, it is argued that the witness did not bring the vouchers stated to be in his possession with regard to payment of salary to the employees, particularly deceased Ramesh Kumar. He did not produce the account books, namely, ledger, cash book etc. maintained by the firm to prove an entry with regard to payment of salary to the deceased. The income tax return brought on record simply shows salary to the extent of Rs.1,68,000/- but there is no specific reference to salary paid to Ramesh Kumar. It is further argued that the claimants failed to adduce satisfactory much less cogent and convincing evidence to prove that the deceased was doing part time job of manufacturing paper bags that could be a source of income for the family. It is argued with vehemence that income of the deceased is liable to be assessed by taking into consideration the minimum wage available to an unskilled worker at the relevant time.

Counsel for the insured while refuting contentions of the insurance company with regard to driving license has carried me through cross examination of Bhag Singh RW-1 and contended that Bhag Singh brought the record only with regard to one of the Licensing Authorities at Una, Himachal Pradesh, but did not bring the record with regard to other Licensing Authorities who issue driving licenses in District Una, Himachal Pradesh. It is further submitted that statement of Bhag Singh is not at all sufficient to discharge the onus by the insurance company that driver of the offending vehicle did not possess a valid driving license at the time of occurrence.

Counsel for the claimants has submitted that income of the deceased assessed by the Tribunal is liable to be enhanced as the deceased was earning much more than Rs.3,000/- per month from sale of paper bags. In addition, it is submitted that the deceased left behind a family consisting of widow and three children. One of the daughters of the deceased examined as a witness was studying and staying at Panchkula. The second daughter was a student of B. Com Ist year and the youngest child, son a student of 10 + 2. It is further argued that it has been proved on record that the eldest daughter of the deceased did MCA from Punjab Technical University, Jalandhar. According to counsel, keeping in view expenses on education of three children particularly expenses on education of eldest child, it is difficult to approve findings of the Tribunal that the deceased was earning only Rs.14,500/- per month. It has further been argued that compensation awarded by the Tribunal under conventional heads also needs enhancement. Another submission made by counsel is that the Tribunal has allowed interest @ 6% per annum but the same should be @ 9% per annum.

For this purpose, he has referred to judgments of Hon'ble the Supreme Court of India **Sandhya Rani Debbarma and others vs. National Insurance Company Limited and another 2016(4) RCR (Civil) 465** and **Kalpanaraj and others vs. Tamil Nadu State Transport Corporation 2014(2) RCR (Civil) 876.**

I have heard learned counsel for the parties, perused the paper-book and the records.

The insurance company examined Junior Assistant, Registering Authority, Una (HP). The witness deposed that as per record, DL No. 19683 of 2009 dated 18.11.2012 was not issued in the name of Sanjeev Kumar. The verification report issued by his office was marked as Ex. RX. In his cross examination, it is stated that there is one RTO in Una district, RLA Amb and Bangana. All these licencing authorities in addition to their authority also issue driving licences in District Una (HP). He has not brought records of all the three authorities other than the authority run from their office. He further deposed that he cannot say if the licence has been issued by those authorities.

Counsel for the insurance company has tried to argue that as licence in question makes reference to HP-20, statement of Bhag Singh, an official from one of the authorities is sufficient to prove that the licence in question is a fake one. However, a bare reading of statement of Bhag Singh does not indicate that HP-20 has any relevance in the context of a licencing authority much less a licence mentioning HP-20 could not be issued by other licencing authority in District Una except the authority whose record was brought by the witness. Keeping in view the fact that the insurance company did not call for the records from other licencing authorities to discharge the onus that the licence in question was not issued by a licencing authority of Una, statement of Bhag Singh is not sufficient to record a positive finding that licence possessed by driver is a fake one and the insured is guilty of breach of terms and conditions of contract of the insurance to seek recovery rights.

This brings the Court to quantum of compensation assessed by the Tribunal. So far as plea of the claimants with regard to enhancement of compensation under conventional heads, the same appears to be meritorious. In the light of various judgments passed by the Apex Court allowing compensation under conventional heads, an amount of **Rs. 1,00,000/-** for loss of consortium to the widow, **Rs. 2,25,000/-** in equal share for loss of love and affection to the children, **Rs. 25,000/-** each for expenses on funeral and loss of estate are awarded.

Counsel for the parties have not disputed correctness of multiplier, deduction to the extent of 1/3rd, benefit of future prospects to the extent of 30% for the purpose of computing loss of dependency. However, there is a serious issue with regard to income of the deceased. As has been noticed hereinbefore, the Tribunal assessed income of the deceased at Rs. 11,500/- towards salary paid by M/s Ralla Ram Joginder Lal Jain and Rs. 3000/- from sale of paper bags.

The claimants examined Lakshvir Jain PW1 to prove employment and salary of deceased Ramesh Kumar. The witness brought documents, salary certificate Ex. P1 and the audit reports Exs. P2 and P2/1. As per salary certificate, the deceased was being paid Rs. 11,500/- per month. The witness did not produce any supporting document like vouchers signed by the employee in regard to receipt of salary, ledger, cash book etc. (accounts books) maintained by the business concern stated to be an income tax payee. In the audit reports Ex. P2 and P2/1 (wrongly mentioned as income tax returns in the statement of the witness), under the head salary, an amount of Rs. 1,68,000/- has been shown. There is no reference to the number of employees with the firm. However, Lakshvir Jain has deposed that he had kept two employees namely Ramesh (since deceased) and Ishu Kumar**.** In absence of any documentary evidence proving extent of salary paid to the deceased, documents Ex. P2 and P2/1, at best, can prove that an amount of Rs. 1,68,000/- per annum was being paid towards salary of two employees, therefore, salary of the deceased would be taken as Rs. 84000/- per annum i.e. Rs. 7000/- per month.

Lakshvir Jain has deposed that the deceased was also doing the work of making paper bags and its sale. One of the claimants Shinkey Rani daughter of the deceased was examined as a witness. She has reiterated that the deceased was very hard working, used to make paper bags and supply those bags to different shops on Sundays and he had been earning Rs.10,000 to 12,000/- per month. In her cross examination, she brought on record documents Ex. R.8 to R.12. The claimants have not examined any witness to prove documents Ex. R.8 to R.12. In the light of testimony of Lakshvir Jain and Shinkey Rani but in absence of any evidence in rebuttal by the respondents therein, it can be held that the deceased was doing some extra work besides being a sales man at the business place of Lakshvir Jain. I stand fortified in my observations from the documents brought on record with regard to expenditure on education of the children. Taking a reasonable view of the matter from the point of view that provisions of the Motor Vehicles Act is beneficent legislation to provide succour to the victim family, income of the deceased from sale of paper bags is assessed at Rs. 4000/- per month. In view of the above, total income of the deceased is assessed at Rs. 11,000/- per month. After applying a multiplier, deduction and addition allowed by the Tribunal, loss of dependency comes to Rs. 11000 x12 x 13 = 17,16,000/- + 5,14,800/- (30% increase) – 5,57,725/- (1/4th deduction) =Rs.16,73,075/-. The total compensation payable is Rs. 20, 48,075/- (Rs. 16,73,075 + Rs. 3,75,000/-). As a consequence, compensation awarded by the Tribunal is reduced by an amount of Rs. 2,57,453/-.

The Tribunal has allowed interest @ 6% per annum from the date of petition till realization. Counsel for the claimants has referred to judgment **Sandhya Rani Debbarma and others's case (supra)** to support his plea for allowing interest at a higher rate. Hon'ble the Supreme Court awarded interest @ 9% per annum from the date of petition till realization. With due regards, Hon'ble the Court has not laid down any *obiter dicta* much less ratio for allowing interest @ 9% per annum. Counsel for the appellant has not produced any document with regard to the interest paid by the banks on FDRs at the relevant time. In these circumstances, I do not find any reason to interfere in the rate of interest assessed by the Tribunal.

For the foregoing reasons, appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimants fails and is accordingly dismissed.

(Rekha Mittal)
Judge

30.11.2016
Banita/paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No