IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 13.12.2016

FAO No. 1588 of 2016

The New India Assurance Company Limited ....Appellant

Versus

Ramesh Kumar and others ....Respondents

FAO No. 1594 of 2016

The New India Assurance Company Limited ....Appellant

Versus

Suman and others ....Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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

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Rekha Mittal, J.

This order will dispose of aforesaid appeals as these have emerged out of same award dated 13.10.2015 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short, 'the Tribunal') with regard to death of Rakesh Kumar and injuries sustained by Ramesh Kumar in a motor vehicular accident that took place on 11.01.2014.

For the sake of convenience, facts are taken from FAO No. 1594 of 2016.

Counsel for the appellant-insurance company has assailed liability of the insurer to pay compensation by contending that driver of the offending vehicle was not possessing a valid driving licence. For this purpose, he sought to rely upon circular dated 01.08.2014 purported to be issued by the Transport Commissioner, Kohima, Nagaland for information of the public that driving licence is issued on Smart Card through the national software (Sarathi) from 30.10.2009. Any licence purported to have been issued by the authority in Nagaland on booklet form after 30.10.2009 is not genuine. The driving licence holders having booklet or on any manual formats other than Smart Card were called upon to report to office for the purpose of digitizing their data and subsequent issue in Smart Card format and exercise to be completed before 01.12.2014 and thereafter driving licences other than Smart Card would be treated as cancelled.

On 14.09.2016, counsel for the appellant sought time that information has been sought under the Right to Information Act, 2005 (in short, 'the RTI') in regard to validity of driving licence produced by driver of the offending vehicle.

Counsel for the appellant has fairly informed that as per information received under the RTI, licence in question was issued in favour of respondent No.1 but has contended that the Company could not get necessary information with regard to correctness of renewal of driving licence from time to time. However, it has been argued that as Rajesh Kumar is a permanent resident of Hissar, licence issued by an authority at Nagaland cannot be held to be valid keeping in view the provisions of Section 9 of the Motor Vehicles Act, 1988 (in short, the Act). In this context, reliance has been placed upon judgment of this Court ***Kuljeet Singh v. Surinder Kaur and others, PLR Vol.CLXXX (2015-4) 273.***

To assail findings of the Tribunal with regard to assessment of compensation qua death of Rakesh Kumar, it has been argued that the Tribunal has wrongly allowed benefit of increase in income for future prospects despite assessing income of the deceased by relying upon the minimum wage fixed by the State of Haryana vide Haryana Gazette Notification dated 09.10.1989, issued by the Labour Department. For this purpose, he has referred to judgments of this Court ***Tara Devi and others v. Kuldeep Singh and others, PLR Vol. CLXXVII (2015-1) 539, Cholamandalam MS General Finance Company Limited v. Lakhmi Chand and others, PLJ Vol.CLXXX (2015-4) 405, Smt. Savita and others v. Satpal and others, PLJ Vol.CLXXX (2015-4) 854*** and ***Sumitra and another v. Ramesh Chand and others, PLJ Vol. CLXXVI (2015-1) 576.***

I have heard counsel for the appellant and perused the paper book particularly the award passed by the Tribunal.

The Tribunal framed issue No. 3 in the following terms:-

> *"3. whether respondent No. 1 was not holding valid and effective driving licence and the terms and conditions of insurance policy were violated?OPR"*

As has been noticed hereinbefore, counsel for the insurance company has informed that after necessary verification from concerned licencing authority at Wokha (Nagaland), it has been found that licence in question was issued by said authority, therefore, the same was found to be genuine. Admittedly, the insurance company has not adduced any evidence to prove that renewal of the driving licence of the period relevant in the present context is not valid.

This brings the Court to contention that the driver was not competent to obtain a licence from the authority at Wokha (Nagaland) as he is a permanent resident of Hissar. Rajesh Kumar son of Bhopal Singh, driver of the alleged offending vehicle appeared in the witness box and tendered into evidence his affidavit Ex.RW1/A. In his cross examination by counsel for insurance Company before the Tribunal, he has deposed that his uncle was residing in Guwahati in Assam and he remained with him for two years. He used to drive transport vehicle in Guwahati. He never stayed in Nagaland but it is just near Guwahati. He got training in Wokha Town, Nagaland. He did not know name of the school in Nagaland in which he took training. His uncle was residing in Guwahati before 2001 and he went to him in 2000-2001. He has no record to show that he stayed at Guwahati or Nagaland. Keeping in view testimony of Rajesh Kumar, driver of the offending vehicle coupled with the information sought by the insurance company with regard to correctness of issuance of driving licence in favour of Rajesh Kumar, I do not find any reason to interfere in the findings recorded by the Tribunal negating plea of the insurance company that driver was not possessing a valid driving licence. Under the circumstances, the insurance company cannot derive any advantage to its contention from what has been held by this Court in *Kuljeet Singh's* case (supra).

The learned Tribunal has assessed income of the deceased at Rs.8100/- per month and allowed benefit of increase in income for future prospects to the extent of 50%. The plea of the claimants is that the deceased was an agriculturists and running a dairy farm, thus, earning

Rs.20,000.00 per month. The Tribunal has noticed that the claimants failed to produce any document to prove income of the deceased. However, the Tribunal has not recorded any finding that the deceased was not an agriculturist or running a dairy farm. No doubt, the Tribunal relied upon wage fixed by the State of Haryana vide notification dated 09.01.1989 to assess monthly income of the deceased. Even if income of the deceased is assessed on the basis of wage fixed by the State of Haryana, it can not be accepted that the deceased would have stagnated at the same wage, had he remained alive. Even the State Government revises minimum wage from time to time either bi-annually or annually. The deceased left behind a family consisting of his widow, two children aged 3-5 years and a widowed mother. Taking into consideration number of dependents upon his income, the deceased was bound to put in his best to satisfy the requirements/needs of his family particularly the children who would have grown in due course of time and raised their demands for meeting expenses on their education and facing peer pressure. When the circumstances of the present case are examined in the light of judgment of Hon'ble the Supreme Court ***Rajesh v. Rajbir Singh, (2013) 9 SCC 54***, it is difficult to accept contention of the appellants that the claimants are not entitled to benefit of increase in income for future prospects. In this view of the matter, I find myself unable to rely upon the judgments referred to by Counsel for the appellant to deny benefit of increase in income for future prospects.

No other point has been raised.

Resultantly, both the appeals fail and are accordingly dismissed in limine.

Photocopy of this order be placed on the file of connected case.

(Rekha Mittal)
Judge

13.12.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No