IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5094 of 2013(O&M)

ICICI Lombard General Insurance Company ...Appellant

Versus

Paramjit Kaur and others ...Respondents

AND

FAO No.5643 of 2013(O&M)

Paramjit Kaur and another ...Appellants

Versus

Gurjinder Singh and others ...Respondents

Date of Decision: March 29, 2016

CORAM:- **HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Amrinder Singh Sidhu, Advocate for the Insurance Company.

Mr.Ashit Maliik, Advocate for the claimants.

Mr.Karan Sharma, Advocate for driver of the offending bus.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two appeals bearing FAO No.5094 and 5643 of 2013, as both have arisen out of the Award dated 19.7.2013 passed by MACT, Karnal, vide which the claim petition filed by the claimants was partly allowed.

The brief facts of the case are that on 2.2.2012, deceased Kulvinder was going to Panipat on his motorcycle No.HR-05AB-9206 and at about 3.30 PM, when he reached near the turn of B-Block, Panipat, all of a sudden, a bus bearing No.HR-67-2166 which was going ahead of the motorcycle, was carelessly and suddenly turned to the left hand side of the road by its driver. Kulvinder tried to escape, but struck against the rear wheels of the bus and fell down. He succumbed to the injuries on the way to hospital. FIR No.149 dated 2.2.2012 under Section 304-A IPC was registered regarding the accident.

The deceased was a bachelor. His parents Paramjit Kaur and Gurcharan Singh – claimants filed the claim petition asserting that the deceased was a student of final semester of Diploma in Mechanical Engineering and was also doing the business of shuttering and earned Rs.20,000/- per month. They claimed compensation of Rs.20,00,000/- along with interest.

Driver and owner filed joint written statement, whereas, Insurance Company filed separate written statement.

On the pleadings of the parties, the following issues were framed:-

> *"1. Whether the motor vehicular accident, which took place on 2.2.2012 was caused on account of rash and negligent driving of vehicle bearing registration No.HR-67-2106 by Gurjinder Singh, respondent No.1 resulting into the death of Kulvinder Singh. If so its effect? OPP*
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> *2. If issue No.1 is proved, whether the claimants are entitled to claim compensation. If so, how much and from whom? OPP*
>
> *3. Whether the respondent No.1 was driving the offending vehicle in violation of terms and conditions of policy of insurance? OPR*
>
> *4. Whether the petition is not maintainable? OPR*

5. Whether the present claim petition has been filed by the claimants in collusion with driver and owner i.e. Respondents No.1 and 2. If so, its effect? OPR

6. Relief."

On appreciation of evidence led by the parties, the Ld. Tribunal assessed the income of the deceased @ Rs.4200/- per month and deducted 50% of it towards his personal expenses and keeping in view the age of the deceased (22 years) applied the multiplier of 18 and held the loss of dependency at Rs.4,53,600/- (2100x12x18). That apart, the Tribunal also awarded a sum of Rs.10,000/- for transportation and last rites. Accordingly, the claimants were held entitled to Rs.4,63,600/- as compensation for the death of their son Kulvinder in the accident.

On issue No.3 regarding violation of terms and conditions of the Insurance Policy, the Tribunal held that there was no breach of the same and accordingly, held the driver, owner and the insurer liable to pay the compensation jointly and severally.

The insurer has filed FAO No.5094 of 2013 questioning the findings of the Tribunal on the validity of the driving licence of Gurjinder Singh – respondent at the time of accident as also on the quantum of compensation. FAO No.5643 of 2013 has been filed by the claimants feeling dissatisfied with the amount of compensation.

I have heard Learned counsel for the parties and gone through the record of the Tribunal, made available by Ld. Counsel for the insurer.

Ld. Counsel for the insurer has contended that the accident had occurred on 2.2.2012, but the driving licence of Gurjinder Singh, driver of the offending vehicle was renewed on 5.3.2012 and it was valid w.e.f. 5.3.2012 to 5.5.2016.

Challenging the quantum of compensation, Ld. Counsel for the insurer has contended that since the deceased was a bachelor and the claimants are his parents, therefore, multiplier should have been applied as per the age of the claimants. Ld. Counsel for the claimants has submitted that no increase in the income on account of future prospects was given . Also no amount under the head of `loss of love and affection' has been awarded.

Firstly, dealing with the issue of validity of driving licence, Ex.R4 is the copy of the same, wherein, it is mentioned, "*Renewed upto 5.5.2016 w.e.f. 5.3.2012*", . Based on this it is argued that the driver did not have a valid licence on the date of the accident i.e, 2.2.2012.

This argument of the Ld. Counsel is falsified by the same very document. The licence mentions the date of issue as "6.5.2010" and it is meant for LMV, MMV, HMV, PSV. Section 14 of the Motor Vehicles Act, 1988 talks about the currency of licences to drive motor vehicles. It provides that a driving licence issued or renewed under this Act to drive a transport vehicle shall be effective for a period of three years. As per Ex.R4 the licence was issued on 6.5.2010 and it is also shown to have been renewed w.e.f. 5.3.2012 upto 5.5.2016. Considering the date of issue of the licence being 6.5.2010, it appears that this renewal date has been wrongly mentioned as 5.3.2012 in Ex R4. Because if it were renewed on 5.3.2012 as indicated therein, in terms of Section 14 of the Motor Vehicles Act, 1988, it could have been effective only for three years upto 4.3.2015. But the renewal is upto 5.5.2016. The only inference from the original date of issue of the licence being 6.5.2010 and its validity after renewal being upto 5.5.2016 is that the licence after issue on 6.5.2010 was effective till 5.5.2013 (three years as per Section 14) and was further renewed from 6.5.2013 to 5.5.2016. Thus, it has to be held that on the date of accident i.e. 2.2.2012, the licence was valid. Accordingly, the finding of the Tribunal on this issue is affirmed.

The matter regarding application of multiplier was examined by three Judges Bench of the Hon'ble Supreme Court in the case of **Reshma Kumari v. Madan Mohan**, **(2013) 9 SCC 65**, in which the decision rendered in **Smt.Sarla Verma and others v. Delhi Transport Corportaion and another**, **2009(3) RCR (Civil) 77**, was considered and it was held that multiplier as given in Smt.Sarla Verma's case (supra) has to be applied. In the said case, Supreme Court applied the multiplier as per age of the deceased. Accordingly, the multiplier in the instant case was correctly applied.

In **Rajesh and others vs. Rajbir Singh and others**, **2013 ACJ 1403**, the Hon'ble Supreme Court has held that in case of self-employed or persons with fixed wages, below 40 years, there must be an addition of 50% to the actual income of the deceased. This view has been affirmed in **Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(6) SCC 347**.

As per **Vimal Kanwar and others Vs. Kishore Dan and others 2013 (7) SCC 476**, the claimant mother is entitled to Rs.1,00,000/- under the head of love and affection and Rs.25,000/- needs to be awarded as funeral expenses.

Accordingly, the compensation is re-assessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Income (after 50% increase) (deceased was aged about 22 years)	4200+[4200x50/100] = 6300/- per month
	½ of (i) deducted as personal living expenses of deceased	6300-[6300x1/2] = 3150/-
	Compensation after multiplier of 18	3150x12x18= 6,80,400/-
(ii)	For loss of love & affection to the mother	1,00,000/-
(iii)	Funeral Expenses	25,000/-
(iv)	Transportation	5,000/-
	Total Compensation awarded	8,10,400/-

Accordingly, the appeal is allowed and the Award of the Tribunal is modified to the extent that the appellants are held entitled to total compensation of Rs.8,10,400/-, that is, Rs.3,46,400/- (810400-464000) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

The amount awarded under head at Sr.No.(ii) `loss of love and affection' shall be exclusively payable to the claimant-mother, as mentioned therein. The remaining enhanced amount shall be payable to the claimants in equal shares as directed by the Tribunal.

Accordingly, FAO No.5094 of 2013 is dismissed and FAO No.5643 of 2013 is allowed to the extent indicated above.

March 29, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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