IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4573-2014 (O&M)
Date of decision: 02.06.2016

Smt. Shakuntla Devi ...Appellant

Versus

Mehar Pal and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J. S. Chatrath, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant (s).

Mr. Y. S. Turka, Advocate for respondent No.1.

Mr. Pardeep Kumar, Advocate for respondent No.3.

-.-

JITENDRA CHAUHAN, J.

The mother of the deceased Aman Kumar has filed the present appeal seeking enhancement of the amount of compensation awarded vide impugned award dated 07.11.2013, passed by learned Motor Accidents Claims Tribunal, Ambala, (for short, 'the Tribunal').

The learned counsel for the appellant contends that the learned Tribunal has erroneously applied the multiplier of 14 on the basis of the age of the claimant and not as per the age of the deceased who was 19 years at the time of accident. Further, the learned Tribunal erred in not granting any amount towards future prospects as per the law laid down in **Rajesh Vs. Rajbir Singh,** 2013(3) R.C.R. (Civil), 170 (SC).

The learned counsel for respondent No.1 has vehemently opposed the present appeal and stated that the insurance company is liable to indemnify the insured and pay the compensation.

On other hand, the learned counsel for respondent No.3 submits that the licence of the driver-respondent No.2, of the offending vehicle is a fake document, therefore, there is a breach of the terms and conditions of the insurance policy. The learned Tribunal rightly exonerated the insurance company. The learned counsel cites **'United India Insurance Co. Ltd. thr. its Divisional Manager Vs. Sujata Arora and others'**, 2013(3) ACC 918 (SC).

I have heard the learned counsel for the parties and carefully perused the entire record.

From the perusal of the award, it is noticed that the learned Tribunal has applied multiplier on the age of the claimant whereas, the multiplier ought to have been applied on the age of the deceased in view of the law laid down in **Munna Lal Jain & Anr vs Vipin Kumar Sharma & Ors,** 2015(3) SCC (Civil) 315 and **Amrit Bhanu Shali and others vs. National Insuarance Co. Ltd. and others,** 2012 ACJ 2002**.** The deceased was admittedly 19 years of age at the time of accident. In view of this, the appropriate multiplier would be '18' instead of '14'.

Further, following the law laid down in Rajesh's case (supra), an addition of 50% is ordered on the actual income of the deceased towards future prospects. However, as the matter pertaining to the future prospects is pending adjudication before Hon'ble the Supreme Court in SLP (Civil) No.16735 of 2014, therefore, the amount of future prospects be released on furnishing of adequate indemnity bonds by the appellant.

In this way, the amount of compensation under the head of 'loss of dependency' comes to Rs.4200/- + 50% X 12 X 18 X 1/2 = Rs.6,80,400/-, as against an amount of Rs.3,52,800/-, assessed by the learned Tribunal under this head.

Considering the statement of RW2-Hari Om Morya, Junior Clerk, RTO Office, Agra, that licence No.6015/AG/05 dated 15.04.2005 was issued by the office of Licensing Authority (RTO) Agra in the name of Krishan Lal Singh and not on the name of Nanak Singh-respondent No.2, it is duly established that the licence in question is a fake document. Plea of the learned counsel for the appellant that even in case of fake driving licence, the insurance company is liable to pay in the first instance and then recover it from the owner, is not tenable in the peculiar circumstances of this case. Reliance in this regard can be placed upon Sujata Arora's case (supra), wherein it was held that once it is established that the licence of the driver of the offending vehicle is a fake one, it would completely exonerate the insurance company.

This Court is also fortified in its view in light of two judgments of Hon'ble the Supreme Court in **National Insurance Co. Ltd. Vs. Laxmi Narain Dhut**, 2007(4) SCALE 36 and **Jawahar Singh Vs. Bala Jain and others**, 2011(5) SCALE 494, wherein it has been held that in case it is found that the offending vehicle was driven by driver who was either holding no driving licence or having a fake licence, then it amounts to violations of terms and conditions of policy and in those circumstances, no liability can be fastened on the insurance company. No fault can be found with the approach of learned Tribunal while exonerating the insurance company to pay the compensation.

In view of the above, the appellant-claimant is held entitled to the enhanced compensation of Rs.3,27,600/- (enhancement towards 'loss of dependency') as indicated above, in the manner prescribed in the impugned award, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, she shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization.

With the aforesaid modification in the impugned award, the present appeal is partly allowed.

02.06.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**