215.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross Objection No.45-CII of 2015 in/and
FAO No.581 of 2013 (O&M)
Date of decision:07.04.2016

United India Insurance Company Limited ... Appellant

versus

Rani Kaushal and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Mohan Gupta, Advocate,
for the appellant.

Ms. Anna Bansal, Advocate,
for Mr. Tejwinder Singh Hundal, Advocate,
for respondents 1 and 2/Cross objectors.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The appeal is at the instance of the insurer challenging the issue of quantum on account of alleged contributory negligence and liability that did not provide for the right of contribution from the owner and driver. The contention as regards the liability by the insurer was that the driving licence which had been issued and filed in court had expired on 23.11.2008 and an application for renewal had been filed beyond a period of 30 days on 02.02.2009. The

accident had taken place on 07.02.2009 and the licence that was issued was effective from 10.02.2009 only. The contention is that the renewal will be effective only from when it was alleged to be renewed and cannot take effect either from the date of expiry of licence on 23.11.2008 or 30 days thereafter or from the date of application seeking for renewal. I uphold the objection taken by the insurer, for, Section 15 of the Motor Vehicles Act enjoins that the licensing authority may renew the driving licence with effect from the date of its expiry, if the application for renewal was filed not more than 30 days from the date of its expiry. This proviso therefore makes it evident that if the application is filed for renewal beyond a period of 30 days, it cannot take effect from the date of its expiry but will be extended only from the date when it is authorized. Sub-section (4) of Section 15 reads that where an application for renewal of driving licence is made more than 30 days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government. There is no specific provision which allows for issue of licence from the date when the licence is filed seeking for renewal. If the person has applied for renewal beyond 30 days, he cannot be said to have any effective driving licence till the licence is issued. On such a reckoning, it must be held that the driver did not have a valid driving licence at the relevant time of the accident and, therefore, there had been a breach of condition of the policy. The Tribunal that assessed the compensation ought to have provided for against the owner and driver for the benefit of the insurer.

2. On the issue of quantum, the first consideration shall be whether there was any contributory negligence that could be attributed to the deceased. It was a case of deceased-motorcyclist dashing against a truck from behind which was stationary. The accident had taken place at 7.15 PM and there was evidence already produced by the claimant and yet another on behalf of the owner that there were no parking lights and that there were no reflectors to warn. The stationary parking of the vehicle and contra evidence that there had been parking lights and reflectors. Apart from two conflicting versions, there was a reference in the FIR itself that the truck which was parked in the middle of the road did not have parking lights or reflectors. The author of FIR was not examined but I will not make much of it and take the statement contained in the FIR and the assertions made by one witness at the time of trial to be sufficient to support the evidence already recorded that the owner and driver of the vehicle were responsible for parking the vehicle in the place that it did and were also responsible for the accident.

3. The claim for enhancement has been made by the claimants on a plea that the deceased was 21 years of age working in his uncle's business as a broker in coal company and the uncle has

given evidence that he was paying ₹7,000/-. The plea for enhancement is made that the prospect of increase in income must have been provided for and ₹1 lakh have to be provided for loss of love and affection in the manner provided in ***Rajesh Versus Rajbir Singh-2013(9) SCC 54***. The deceased was 21 years of age and on a fragile scheme of employment under his uncle, a mere certificate on assertion is hardly sufficient to believe that an unskilled person was being rewarded with ₹7,000/-. I do not find this employment to be so stable as to find prospect of increase. I will take the income at ₹7,000/- as taken already by the Tribunal, allow for ½ deduction for personal expenses and apply a multiplier of 18, taking the loss of dependency at ₹7,56,000/-. I will provide for an additional amount of ₹1 lakh for loss of love and affection, ₹5,000/- for loss to estate and ₹25,000/- towards funeral expenses. The various heads of claims are tabulated as under:-

Accident	07.02.2009		
Age	21		
Occupation			
Claimants	Parents		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (₹)	Amount (₹)
1.	Income		7,000
2.	Add,% of increase 30%/50%		
3.	Deduction ½, 1/3, ¼, 1/5		3,500
4.	Multiplicand		42,000
5.	Multiplier		18
6.	Loss of dependence		7,56,000
7.	Medical expenses		

8.	Loss of consortium		
9.	Loss of love and affection		1,00,000
10.	Loss to estate		5,000
11.	Funeral expenses		25,000
	Total	7,56,000	8,86,000

There shall be an award of ₹8,86,000/- and the amount in excess over what has been awarded already by the Tribunal will attract interest at 7.5% from the date of petition till date of payment. The liability shall be on the insurer and the insurer will be at liberty to recover the same from the owner and driver.

4. The appeal by the Insurance Company is allowed to the extent of modifying the joint liability to make the provision of right of recovery against the owner and driver and the cross objection is allowed to the extent indicated above.

(K.KANNAN)
JUDGE

07.04.2016
sanjeev