IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

XOBJC-95-CII of 2013 in/and
FAO No. 3649 of 2013 (O&M)
Date of Decision : 17.10.2016

National Insurance Company Ltd. ....Appellant

Versus

Anju and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ravinder Arora, Advocate
for the appellant.

Mr. G.S. Shahpuri, Advocate
for respondents no. 1 to 5-cross-objectors.

Ms. Parminder Singh, Advocate
for respondent no. 7.

Surinder Gupta, J.

National Insurance Co. Ltd. filed appeal against award dated 26.03.2013 passed by Motor Accident Claims Tribunal, Ambala whereby claimants were allowed compensation of ₹10,94,170/- for death of Rajbir Singh, husband of claimant no. 1, father of claimants no. 2 and 3 and son of claimants no. 4 and 5, in a motor vehicle accident with truck bearing registration no. HP-12-A-5706 (later referred to as 'the offending vehicle').

2. The Tribunal allowed compensation of ₹10,94,170/- to claimants, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Rajbir Singh
(ii)	Age assessed	Between 26 to 30 years

(iii)	Income of the deceased	₹5300 per month
(iv)	30% of (iii) added towards future prospects	(₹5300+₹1590)= ₹6890 per month
(v)	Annual amount of dependency	(₹6890x12)= ₹82680 per annum
(vi)	1/4th of (v) deducted towards personal expenses	(₹82680-₹20670)= ₹62010 per annum
(vii)	Amount of dependency after applying multiplier of 17	(₹62010X17)= ₹1054170
(viii)	Transportation and funeral expenses	₹10000
(ix)	Loss of consortium	₹10000
(x)	Loss of estate	₹10000
(xi)	Towards non-pecuniary damages	₹10000
	Total	**₹1094170**

3. In this appeal, claimants also filed cross-objections seeking enhancement of compensation awarded by the Tribunal.

4. I have heard learned counsel for parties and perused the paper-book and record of the Tribunal with their assistance.

5. Learned counsel for the appellant has argued that despite proof of this fact that driver of the offending vehicle, namely, Parmod Singh was not possessing a valid driving licence, Tribunal denied recovery rights against owner of the offending vehicle on the ground that he had seen the licence of driver before engaging him and had also taken his test. The fake driving licence produced on file clearly shows that it was for L.T.V. transport vehicle while owner had engaged him to drive the truck, which is a heavy transport vehicle, as such, even on perusal of driving licence, the owner could make out that driver was not possessing a valid driving licence

to drive the truck. The conclusion drawn by Tribunal that "in the facts and circumstances of the case the use of words LTV in badge details cannot be considered to be sufficient to put the respondent no. 2 on guard for making further enquiries due to the reason of driving licence copy Ex. R-3 not being valid for heavy transport vehicle as in the relevant column of class of vehicle word 'transport' was written" is erroneous and against facts proved on file.

6. Learned counsel for respondent no. 7 (owner of the offending vehicle) has argued that driving licence produced on record shows that it was valid for transport vehicle, as such, owner of the offending vehicle could presume that it was valid for heavy transport vehicle. Keeping in view the above facts, Tribunal has rightly declined recovery rights to the insurer against the insured.

7. Licence of respondent no. 6 produced on file as Ex. R-3 was fake and this fact has not been assailed by learned counsel for respondent no. 7-owner of the offending vehicle. No fault can be found with the observations of Tribunal that when an owner of a vehicle while engaging driver had taken his test and seen his driving licence, he may not be held liable for breach of terms ad conditions of insurance policy. But in this case, Parmod Singh was engaged by Gurbachan Singh for driving his truck and perusal of driving licence placed on file as Ex. R-3, which he had seen at the time of engaging driver, clearly shows that this licence was not valid for driving heavy transport vehicle.

8. Learned counsel for respondent no. 7-owner of the offending vehicle has tried to make out that on front side of the licence it is mentioned

that it was valid for transport vehicle till 19.06.2013 and this led Gurbachan Singh to believe that Parmod Singh is authorized to drive truck, which is a transport vehicle.

9. The above argument of learned counsel for respondent no. 7-owner of the offending vehicle and conclusion drawn by the Tribunal are against facts and evidence on record. On the driving licence (Ex. R-3), it is mentioned on front side as follows:-

Date of issue	15/06/2007
Valid Till (NT)	14/06/2027
Valid Till (T)	19/06/2013

10. On backside of the driving licence (Ex. R-3), it is mentioned as follows:-

Vehicle Class	**Date of Issue**
LMV	15/06/2007
Transport	15/06/2007

Badge Details		
Number	Date of Issue	Valid Till
LTV649634	20/06/2010	19/06/2013

11. On this fake licence there is no mention that Parmod Singh was authorized to drive heavy transport vehicle. Owner of the offending vehicle, who had seen this licence, cannot be deemed to have taken due precautions while engaging driver and defence that he is not liable for breach of terms and conditions of insurance policy as he had seen driving licence (Ex. R-3), is not available to him. On seeing the driving licence (Ex. R-3) anyone could make out that driver holding this licence is not authorized to drive heavy transport vehicle. It is specifically mentioned in

this driving licence that this licence had been issued for L.M.V. and the transport vehicle for which it has been issued has been further defined as L.T.V. The Tribunal has committed grave error while looking into the details of this driving licence. Finding of the Tribunal on issue no. 3 is perverse, against facts and legally unsustainable, as such, reversed. Insurer of the offending vehicle on payment of amount of compensation shall have right to recover the same from owner of the offending vehicle as per law settled by Apex Court in case of ***National Insurance Company Ltd.* vs. *Swaran Singh and others*, 2004 (3) SCC 297.**

12. In view of my above discussion, the appeal filed by Insurance Company is accepted to the extent that for breach of terms and conditions of insurance policy, the insurer shall have right to recover amount of compensation paid by it from owner of the offending vehicle.

CROSS-OBJECTIONS

13. Learned counsel for claimants-cross-objectors has argued that the Tribunal while awarding compensation has allowed 30% addition in income of the deceased towards future prospects, which as per observations of Apex Court in case of ***Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54**, which are followed in case of ***Munna Lal Jain and others* vs. *Vipin Kumar Sharma and others*, 2015 (3) RCR (Civil) 447** should be 50%. Amount awarded by the Tribunal towards funeral expenses, loss of consortium and loss of estate is also on lower side. No compensation has been allowed to minor children of the deceased towards loss of love and affection care and guidance.

14. Learned counsel for the appellant-Insurance Company has

argued that the Tribunal took age of the deceased as 28 years despite documentary evidence on record (Ex. R-1) which mentions his age as 20 years on 01.01.1999. The accident took place on 09.08.2011 and at that time the deceased was 32 years of age. The Tribunal has not looked into this documentary evidence, which is not disputed and has relied on age of the deceased as mentioned in postmortem report, which is not authentic.

15. Firstly, I take point of age of the deceased. The Tribunal while assessing age of the deceased has relied on testimony of his wife Anju, who appeared as PW-1 and the postmortem report, which described age of the deceased as 28 years. At the time of postmortem doctors do not take any documentary evidence with regard to age of the deceased. They mention age on the basis of information supplied to them by the persons present at the time of postmortem. Though, Anju wife of the deceased described his age as 28 years but she has also admitted voter identity card of the deceased (Ex. R-1) which mentions his age as 20 years as on 01.01.1999, which shows that at the time of accident he was 32 years of age. When documentary evidence regarding a fact is available, oral testimony and unauthentic record cannot be given any credence. The Tribunal has ignored this document while assessing age of the deceased as 28 years. On the basis of voter identity card (Ex. R-1) age of the deceased at the time of his death was 32 years.

16. As per law laid down by Apex Court in case of ***Rajesh (supra)*** which was followed in case of ***Munna Lal Jain (supra),*** claimants are entitled to 50% addition in income of the deceased towards future prospects. Claimants are also entitled to compensation of ₹1 lac each under

the conventional heads i.e. loss of consortium for wife, loss of love and affection care and guidance for minor children and loss of estate, love and affection for parents of the deceased. The multiplier applicable, while computing loss of dependency as per norms laid down by Apex Court in ***Sarla Verma and ors.*** ***vs.*** ***Delhi Transport Corporation and another, (2009) 6 SCC 121***, is 16. Claimants are also entitled to compensation of ₹25,000/- towards funeral expenses and transportation charges.

17. In view of above, the amount of compensation to which claimants are entitled, is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Rajbir Singh
(ii)	Age of the deceased	32 years
(iii)	Income of deceased as assessed by the Tribunal	₹5300 per month
(iv)	50% of (iii) added towards future prospects	(₹5300+₹2650)= ₹7950 per month
(v)	1/4th of (iv) deducted as personal expenses of the deceased	(₹7950-₹1988)= ₹5962 per month
(v)	Amount of dependency after applying multiplier of 16.	(₹5962X12X16) = ₹1144704 per annum
(vi)	Loss of consortium for wife	₹100000
(vii)	Loss of love and affection for minor children	₹100000
(viii)	Loss of estate, love and affection for parents	₹100000
(ix)	Funeral expenses	₹25000
Total		**₹1469704 (rounded off to ₹1469700)**

18. As a sequel of my discussion above, cross-objections filed by claimants-respondents no. 1 to 5 have merit and are accepted. Award of the

Tribunal is modified and the compensation allowed to claimants for death of Rajbir Singh is enhanced from ₹10,94,170/- to ₹14,69,700/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Amount of enhanced compensation shall be shared by claimants-respondents no. 1 to 5 as follows:-

(i)	Claimant no. 1-wife	=	40%
(ii)	Claimants no. 2 & 3 (children)	=	20% each
(ii)	Claimants no. 4 & 5 (parents)	=	10% each

19. The share of claimants-appellants No. 2 and 3, who are minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and they shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in their names after the date of their attaining majority. The above direction has been issued to save claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after attaining the age of majority. Claimant no. 1-Anju, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minors deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their brought up.

20. In the event of demise of any of the claimants before or after passing of award, compensation of his/her share shall be paid to surviving claimants.

21. Appeal filed by Insurance Company is also accepted. Appellant-Insurance Company being insurer of the offending vehicle shall pay amount of compensation at the first instance and shall have right to recover the compensation, so paid, from insured for breach of terms and conditions of insurance policy.

October 17, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*