IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 28.08.2017

FAO 343 of 1996

National Insurance Company Limited Kapurthala ....Appellant

Versus

Smt. Charno and others ....Respondents

FAO 1076 of 1996

Charno and others ....Appellants

Versus

Surjit Singh and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Bhupesh Dogra, Advocate
for the insurance company

None for the claimants

None for the driver and owner of the offending vehicle

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Rekha Mittal, J.

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 06.11.1995 passed by the Motor Accidents Claims Tribunal, Jalandhar (in short, 'the Tribunal') whereby compensation has been awarded in regard to death of Balbir Singh in a motor vehicular accident that took place on 23.07.1991.

The Tribunal assessed income of the deceased at Rs.18,000.00 per annum, deducted 1/3rd for personal expenses and adopted multiplier of 12 to compute loss of dependency to the tune of Rs.1,44,000.00. In addition, an amount of Rs.16,000.00 for expenses on medical treatment and funeral etc. and Rs.5,000.00 for damage to Auto Rickshaw bearing No. PJJ 1714 has been awarded making total compensation to Rs.1,65,000.00, payable with interest at the rate of 12% per annum from the date of petition i.e. 18.01.1992 till realization.

FAO No. 343 of 1996 has been filed by the insurance Company (hereinafter to be referred as 'the Company') whereas FAO No. 1076 of 1996 has been filed by the claimants seeking enhancement of compensation.

Counsel representing the company would urge that as Surjit Singh, driver of Maruti Van bearing registration No. PCH 140 (alleged offending vehicle) was not holding a valid driving licence at the time of occurrence, the insured is guilty of committing breach of terms and conditions of insurance policy, entitling the company to be exonerated of its liability to pay compensation or in the alternative it be given recovery right against the insured after satisfying claim of the claimants. It has further been argued that the company examined Shri Mohan Lal, Clerk from DTO Office Kapurthala (RW2) to prove that no such licence No.138/KPT/88-89 was issued in the name of Surjit Singh son of Pakhar Singh, resident of Village Kadupur, Kapurthala, as per record. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court ***National Insurance Company Limited vs Geeta Bhat and others, 2008 (3) R.C.R. (Civil) 44***. Further argued that owner of the offending vehicle did not appear in the witness box to support findings of the Tribunal that the owner employed the driver under a bona fide impression that he was holding a valid driving licence, therefore, the insured cannot derive advantage of the ratio laid down in ***United India Insurance Company Limited vs. Lehru, 2003(2) R.C.R. (Civil) 278*** and ***Pepsu Road Transport Corporation vs. National Insurance Company Limited, 2013 (4) R.C.R. (Civil) 273***.

There is no representation on behalf of the driver and owner of the offending vehicle. Similarly, no one has appeared on behalf of the claimants to address arguments.

I have heard counsel for the company, perused the paper book and evidence of the witnesses made available during course of hearing as records were destroyed in a fire incident.

Perusal of the findings on issue No. 5 recorded by the Tribunal would indicate that the Tribunal has not at all adverted to testimony of Shri Mohan Lal (RW2) examined by the company to prove that driving licence possessed by Surjit Singh was not issued from the office of DTO Kapurthala. The owner of the vehicle did not appear in the witness box to say something as to what inquiry was made by him at the time of engaging Surjit Singh as a driver of Van PCH 140. Once the owner did not appear in the witness box to depose that he had seen the driving licence and believed the same to be genuine, registered owner of the offending vehicle cannot derive any advantage from the aforesaid judgments.

As driver of the offending vehicle was not holding a valid driving licence at the time of occurrence, the insured is guilty of committing breach of terms and conditions of contract of insurance entitling the insurance company to press for its claim for recovery against the insured after payment of compensation to the claimants. As such, findings of the Tribunal on issue No. 5 are accordingly modified to the effect that respondent No. 1 therein was not having a valid driving licence and resultantly the Company shall be entitled to recover the amount of compensation from the insured after discharging its liability towards the claimants.

The claimants have preferred FAO No. 1076 of 1996 seeking enhancement of compensation.

The application for compensation was filed by the widow, four minor children and parents of deceased Balbir Singh and all of them have been held entitled to get compensation, therefore, admissible deduction would be $1/5^{th}$.

The deceased was in the age bracket of 36-40 years, therefore, appropriate multiplier would be 15. The Tribunal has not allowed benefit of increase in income for future prospects. The deceased left behind a large family consisting of widow, four minor children and parents. He would not have stagnated at income of Rs.18,000.00 per annum, had he remained alive. I get fortification to my observations from the fact that the State Governments revise minimum wages at short intervals to keep the same in consonance with the rising price index etc. The claimants are entitled to benefit of increase in income for future prospects to the extent of 50%. In view of the above, loss of dependency comes to **Rs.3,24,000.00**

Heads	**Amount**
Loss of dependency 18000x15	2,70,000.00

Benefit of increase in income for future prospects to the extent of 50%	1,35,000.00
1/5th deduction for personal expenses	81,000.00
Total 2,70,000+1,35,000-81,000	**3,24,000.00**

Compensation awarded by the Tribunal for expenses on medical treatment and funeral and damage to Auto Rickshaw is affirmed.

The minor claimants (children of the deceased) are awarded Rs.1,50,000.00 (to be shared equally) for loss of love and affection of their father. Further Rs.20,000.00 for loss of consortium to widow, Rs.20,000.00 for loss of love and affection to mother of the deceased and Rs.20,000.00 for loss of estate is awarded.

In view of the above, total compensation comes to **Rs.5,55,000.00** (3,24,000 + 16,000 + 5,000 + 1,50,000 + 20,000 + 20,000 + 20,000) and additional amount is **Rs.3,90,000.00** (5,55,000 - 1,65,000) which shall carry interest at the rate of 6% per annum from the date of petition till realization. The additional amount shall be payable to widow of the deceased except loss of love and affection awarded to the children and mother of the deceased. The Insurance company shall be liable to pay additional amount as well as compensation assessed by the Tribunal to the claimants but would have right of recovery against the insured which can be enforced by filing an appropriate application before the Tribunal.

For the foregoing reasons, both the appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

28.08.2017
mohan bimbra

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