

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

FAO No.1957 of 1999

Date of Decision:-06.04.2017

Nasima Begam and others

...Appellants

Versus

Malkiat Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Rajesh Arora, Advocate
for the appellants.

Mr. Navin Kapur, Advocate
for respondent No.2-Insurance Company.

HARI PAL VERMA J.(Oral)

The appellants-claimants have filed the present appeal against the award dated 11.3.1999 passed by learned Motor Accident Claims Tribunal, Ambala, whereby the learned Tribunal has awarded the compensation to the appellants-claimants under Section 140 of the Motor Vehicles Act instead of Section 166 of the Motor Vehicles Act (hereinafter called 'the Act').

Learned counsel for the appellants-claimants has argued that the Award dated 11.3.1999 needs to be modified. At the time of accident, the deceased Jamil Khan was aged about 35 years. He was driving the truck bearing Registration No.HR-01A-2188, which was owned by his father,

namely, Munshi Khan. The offending vehicle i.e. truck bearing Regn. No.HR-01B-6288 was owned by deceased Jamil Khan, which was being driven by Malkiat Singh, therefore, the claim petition was required to be considered under Section 166 of the Act and not under Section 140 of the Act. He has placed reliance of the judgment of **Sukhbeer Kaur and others vs. National Insurance Co. Ltd. 2008 ACJ 1094**, wherein, the deceased was driving his own vehicle and the policy did not cover the risk of the owner as the certificate of insurance covered the risk of owner of vehicle in the event of 'any accident arising out of the use of vehicle'. It was held that the insurance company is liable to satisfy the claim. He has referred para 4 of the judgment, which reads as under :-

“4. Learned Counsel for the appellant has shown us photocopy of certificate of insurance issued by the respondent (company) in favour of insured i.e. Sukhdev. In this certificate, it is specifically mentioned by way of condition that risk of insured is also covered. This is how the condition reads in the said certificate:

"Any person including the insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Provided also that a person holding an effective learner's licence may also drive the vehicle when not used for transport of goods at the time of the accident and such a person satisfies the requirement of Rule No. 3 of the Central Motor Vehicles Rule, 1989."

On the other hand, learned counsel for respondent No.2- Insurance Company has argued that as per the policy issued by the Insurance Company, neither the legal heir nor the insured, who has died in

the accident, are entitled for the compensation. Even the compensation awarded by the Tribunal is not legally sustainable. He has relied upon **Dhanraj vs. New India Assurance Co. Ltd. and another 2005 (1) ACJ 1** to contend that the Insurance Company covers the liability incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Therefore, the deceased, who himself was an owner of the offending vehicle i.e. truck bearing Regn. No.HR-01B-6288 and the legal heirs of deceased Jamil Khan are not entitled for any amount of compensation.

I have heard learned counsel for the parties.

Taking into consideration the judgment passed by the Madhya Pradesh High Court in the case of **Sukhbeer Kaur and others** (supra), this Court finds that the case of the appellants-claimants requires to be considered under Section 166 of the Act, for the reason that deceased Jamil Khan was not driving the vehicle which was owned by him and, therefore, it strictly cannot be construed that he was a insured. There is no dispute that deceased Jamil Khan was driving the vehicle i.e. truck bearing Regn. No.HR-01A-2188, which was owned by his father Munshi Khan, whereas the other vehicle i.e. HR-01B-6288, which was though owned by Jamil Khan, but was being driving by Malkiat Singh. Therefore, the legal heir of deceased Jamil Khan are entitled to be considered for compensation under Section 166 of the Act. Once this Court has come to this finding that legal

heirs of deceased Jamil Khan are entitled for compensation, this Court finds that the awarded compensation by the Tribunal requires enhancement. The deceased Jamil Khan was about 35 years of age and the Tribunal has awarded the compensation by considering his income as Rs.2000/- per month, whereas in addition to being a driver on truck No. HR-01A-2188, owned by his father, he was owner of truck No.HR-01B-6288. Therefore, it can be presumed that he must be earning some income from the truck owned by him in addition to the income drawn by him as a driver of truck No. HR-01A-2188. Therefore, this Court finds that having regard to the date of accident, which occurred in the year 1995, the income of the deceased is assessed as Rs.3,000/- per month. He being 35 years of age at that time, this Court finds that multiplier of 16 is required to be applied. Since the deceased Jamil Khan had left behind a widow and three minor children, a deduction of 1/3rd on the salary of the deceased is required to be applied. In this manner, the loss of dependency is assessed as $\text{Rs.}3000 - 1000 = 2000 \times 12 \times 16 = \text{Rs.}3,84,000/-$. The Tribunal has awarded only Rs.2000/- as funeral expenses, which deserves to be enhanced to Rs.5000/-. No amount of compensation on account of love and affection had been awarded to the minors. The claimant also deserves compensation for the loss of estate and loss of consortium. Considering three minor children of the deceased, a consolidated amount of Rs.30,000/- is also awarded under this head.

In this manner, the Award dated 11.3.1999 is modified to the extent that the claimants shall be entitled for $\text{Rs.}3,84,000 + 5000 + 30,000 =$

Rs.4,19,000/- as compensation. However, the interest awarded by the Tribunal @ 12% per annum is required to be reduced and accordingly, the claimants shall be entitled for interest on the modified awarded amount @ 6% per annum instead of 12% per annum.

With the aforesaid modifications, the present appeal is disposed of.

April 06, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No