IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1677 of 1998 and
X Obj No.19-CII of 2000
Date of Decision.12.07.2017

New India Assurance Company Limited ....Appellant

Vs

Ajit Singh and others ....Respondents

2. **FAO No.1678 of 1998**

New India Assurance Company Limited ....Appellant

Vs

Sumitra Devi and others ....Respondents

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Nikunj Dhawan, Advocate for
Mr. Harsh Aggarwal, Advocate
for respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two first appeals bearing Nos.1677 and 1678 of 1998 filed on behalf of the insurance company and the cross-objection bearing No.19-CII of 2000 filed by the claimants against the awards passed by the Tribunal whereby in FAO No.1677 of 1998, a compensation of ₹1,75,000/- had been awarded on account of death of a young man of 21 years old namely Jagroop Singh and ₹1,75,000/- had been awarded on account of death of one Ram Chander in a motor vehicular accident on 29.10.1995.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the insurance company submits that the liability to pay compensation has been fastened upon the insurance company being indemnifier but the fact remains that the driver was not having a valid and effective driving licence at the time of accident and in this regard, an application under Order 41 Rule 27 CPC accompanied by the appeal was filed and this Court vide order dated 28.10.2015, which reads as under, had granted the liberty to the insurance company to get the veracity/validity of the driving licence examine:-

> *"The issue for adjudication is whether the driving was duly licensed. It is a grievance of the insurer that it did not have adequate opportunity to prove its contention. While the insurer would contend that the driver of the vehicle had licence to drive only the motor cycle, the counsel appearing on behalf of the owner driver would contend that the driver actually held the licence not merely for the two wheeler but also for the transport vehicle. I would think it appropriate to allow for parties to give evidence before the Tribunal on the issue of driving licence and it shall not be necessary for the claimants to join the adjudication, for, with or without licence, the insurer will have the liability as far as 3rd party claimants are concerned. The mater is remitted for collection of evidence regarding the nature of driving licence that the driver had. The parties are at liberty to adduce documents in oral evidence. The Tribunal will be at liberty to summon any record if parties seek for such an course.*
>
> *To await report on 09.03.2016.*
>
> *The parties to appear before the MACT on*

16.11.2015.

The Tribunal will also be at liberty to appoint any local commissioner for collection of evidence from the Transport office if summoning of documents or witness is inconvenient and would involve delay in securing the appropriate evidence."

In view of the report having been submitted by the concerned MACT, the driving licence bearing No.UP70/1991/0007268 has been found to be valid and effective, therefore, for driving a Light Motor Vehicle whereas the argument of the insurance company before the MACT was that the driver had only effective driving licence for the purpose of driving a motor cycle. Certified copy of the report of the MACT dated 11.03.2016 passed on by the counsel appearing on behalf of the insurance company has been taken on record and be kept at the end of the paper book.

There is also cross objection on behalf of the claimants in FAO No.1677 of 1998 i.e. X Obj No.19-CII of 2000 seeking enhancement of compensation on account of death of one Jagroop Singh, aged 21 years on the ground that the compensation has been awarded on lesser side as multiplier of 16 has been applied and no future prospect has been awarded, much less, the compensation of ₹15,000/- has been awarded towards loss of love and affection whereas, it should have been on the higher side.

Mr. Nikunj Dhawan, Advocate appearing for Mr. Harsh Aggarwal, learned counsel appearing on behalf of the respondents submits that in view of the report of the MACT, the appeals filed on behalf of the insurance company are liable to be dismissed.

I have heard learned counsel for the parties and appraised the paper book and of the view that the appeals filed on behalf of the insurance company are liable to be dismissed by virtue of report dated 11.03.2016 rendered by the MACT, Ludhiana in pursuance of the order ibid of this Court. For the sake of brevity, the report reads as under:-

> "*Vide order dated 28.10.15 in FAO No.1677 and 1678 of 1998 and X-obj No.19-CII/2000, New India Assurance Company Vs. Ajit Singh and others, this court was directed with direction to allow the parties to give evidence as there was dispute with regard to the nature of the driving licence, whether it was two wheeler or also for the transport vehicle and it shall not be necessary for the claimants to join the adjudication, for, with or without licence.*
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> *Whereas, the contention of the Ld. Counsel for the owner/driver that the driver actually held the licence not merely for the two wheeler but also for the transport vehicle Insurer had closed the evidence today. Respondent No.2 has also cloed the evidence today. Respondent No.1 had already closed the evidence earlier on 25.2.16 and the matter was remitted for collection of evidence regarding the nature of driving licence of driver.*
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> *Respondent No.1/driver had tendered licence mark Z issued by Govt. of U.P. Bearing No.UP70/1991/0007268 having previous number R-7268/A/91 and the same was issued for MCWG, LMV and was valid from 16.8.91 to 9.3.2009.*
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> *Whereas the insurance company has tendered into evidence mark RA with regard to the same driving licence*

which was tendered by the driver mark Z and the verification report is Ex.RB, wherein it is verified that the nature of the driving licence was for motor-cycle and LMV(NT).

Hence, both the parties have tendered the same licence which have been verified from the appropriate authority. As such, the report is submitted to the Hon'ble High Court as desired vide order dated 28.10.2015 in FAO No.1677 and 1678 of 1998 and X-Obj No.19-CII/2000. Ahlmad is directed to send the report to the Hon'ble High Court as desired. Papers be consigned to the record room."

In view of the aforementioned fact, once driving licence has been held to be valid for the purpose of driving LMV (NT) and motor cycle, plea of the insurance company for exoneration from liability is wholly misplaced, thus, rejected. Resultantly, the appeals filed by the insurance company are dismissed. The liability has rightly been fastened upon the insurance company, being indemnifier.

As regards the claim of the cross objectors, I am of the view that since the deceased was 21 years of age, multiplier of 16 adopted by the Tribunal is on lesser side. It should have been 18. The income has been assessed correctly, much less, the deduction made for personal expenses.

As regards the increase of future prospect, the Hon'le Supreme Court in the ratio decidendi culled out in the judgment rendered in ***Chikkamma and another Vs. Parvathama and another*** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self-employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

> *"9. Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation ha already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused.*

In view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Chikkama's case*** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the larger Bench of Hon'ble Supreme Court. The other heads of claim are tabulated as under:-

FATAL ACCIDENT			
Age	21 years		
Occupation	Wrestler		
Claimants	Parents		
	Heads of claim	**Tribunal**	**High Court**
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Income	15000 p.a.	15000 p.a.
2	Add, % of increase	--	--
3	Less, Deduction	10,000	10,000
4	Multiplicand (annualized by multiplying 12)		
5	Multiplier	16	18
6	Loss of dependence	1,60,000	1,80,000
7	Medical Expenses & Transportation		
8	Loss of Consortium		
9	Loss of love and affection	15,000	50,000

FATAL ACCIDENT			
10	Loss to estate		5000
11	Funeral expenses		25000
	Total	**1,75,000**	**2,60,000**

The amount of compensation payable shall be ₹2,60,000/-. The amount in excess over what has already been provided by the Tribunal shall attract interest @6% from the date of filing of the appeal till realization. The enhanced amount shall be distributed equally amongst the claimants. The liability shall remain same as fixed by the Tribunal.

The award is modified and the cross objection is allowed to the above extent.

(AMIT RAWAL)
JUDGE

July 12, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No