IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 06.11.2017

FAO 1708 of 1998 and X objection 8-CII of 1999

National Insurance Company Limited ....*Appellant*

Versus

Paramjit Kaur and others ....*Respondents*

FAO 1709 of 1998

National Insurance Company Limited ....*Appellant*

Versus

Baljit Kaur and others .....Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Deepak Suri, Advocate
for the Insurance Company

Mr. C L Sharma, Advocate
for the claimants/cross objectors

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals and cross objections as these have emerged from the same accident.

FAO Nos. 1708 and 1709 of 1998

Counsel for the appellant - insurance Company would urge that the appeals have been filed to assail findings of the Tribunal on issue No. 3 whereby plea of the company that driver of the offending vehicle was not possessing a valid licence has been negated. To bring home his contention, it is argued that though driver of the offending vehicle produced on record a renewed driving licence but he failed to produce on record original driving licence or provide particulars thereof, rendering the Company handicap to establish that the original licence possessed by the driver was not valid. It is further submitted that failure of the insured or his driver to supply particulars of the original licence would raise an adverse inference against them that licence possessed by the driver was not a valid one.

Counsel representing the claimants/cross objectors, on the contrary, has supported findings of the Tribunal on issue No. 3 with the submissions that Sushil Kumar, driver of the offending vehicle appeared in the witness box and deposed that he went to the office of DTO, Faridkot for 2-3 times for issuance of his licence and the Officer took his driving licence.

There is no representation on behalf of respondents No. 6 and 7 who were earlier being represented by a counsel.

I have heard counsel for the parties, perused the paper book particularly the award impugned.

The Tribunal in paras 17 to 29 has dealt with question of driving licence of Sushil Kumar. In para 19, there is reference to the facts elicited in deposition of Sushil Kumar (RW1) in respect of driving licence Ex.R1 which was renewed by the office of DTO Faridkot for the period subsequent to date of accident. Sushil Kumar failed to provide particulars of licence originally issued on the basis whereof licence was renewed on 28.10.1996 valid upto 29.10.1999. As the driver or insured failed to provide particulars of licence possessed by the driver prior to its renewal w.e.f. 28.10.1996, the company was rendered helpless to produce necessary evidence that driver was not possessing a valid licence on the day of occurrence i.e. on 05.04.1996. As per the settled position in law, renewal of a fake licence would not do away the wrong with regard to licence being fake.

The insured did not appear in the witness box to say if he had seen driving licence with the driver and employed him under a bona fide impression that he was possessing a valid licence to drive, therefore, he is not entitled to derive advantage of ratio laid down by Hon'ble the Supreme Court of India 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.*** Under the circumstances, it can be held that driver was not possessing a valid licence on the date of accident i.e. 05.04.1996. As such, the insurance company would be entitled to recover the amount of compensation from the insured after satisfying its liability qua the claimants. In this context, reference can be made to judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v Swaran Singh and others, (2004) 3 SCC 297***.

Disposed of accordingly.

Cross objection 8 CII of 1999

Paramjit Kaur filed an application under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Rajinder Singh in a motor vehicular accident that took place on 05.04.1996.

The Tribunal assessed income of the deceased at Rs.1,521.00

per month, deducted 1/3rd for personal expenses and applied multiplier of 14 to compute loss of dependency at Rs.1,84,800, payable with interest at the rate of 12% per annum from the date of petition till realization.

Counsel for the cross objectors (Claimants) would urge that deceased was working as Havildar in CRPF. Paramjit Kaur, widow of the deceased appeared in the witness box and examined Havildar Joginder Singh, an official of the Government, produced on record salary certificate Mark A and document Ex. AW3/A, containing details of pay and allowances deceased was getting at the time of death. It has been argued that the Tribunal has not assigned any reason to reject the documents and statements of aforesaid witnesses qua salary of the deceased.

Another submission made by Counsel is that the Tribunal has not extended benefit of increase in income for future prospectus to the extent of 50% as the deceased was 35 years of age and in regular employment of the Union Government. Admissible multiplier on the basis of age of the deceased should be 16. Reasonable compensation may be allowed under the conventional heads.

Counsel representing the insurance company, on the contrary, would urge that adequate compensation has been awarded by the Tribunal.

I have heard counsel for the parties, perused the paper book and copies of documents made available by counsel for the insurance company during the course of hearing.

As has been noticed herein before, Paramjit Kaur, widow of the deceased and Havildar Joginder Singh appeared in the witness box to substantiate plea of the claimants that deceased was working as Havildar in

CRPF at salary of Rs.3,600.00 per month. The insurance company did not adduce any evidence to rebut the aforesaid oral evidence and documents Mark A and Ex AW3/A. On the basis of testimony of Joginder Singh, income of the deceased is assessed at Rs.3,600.00 per month. The deceased was born on 25.04.1960 and died on 05.04.1996, therefore, he was less than 36 years, thus, addition in income for future prospectus would be 50%. The admissible multiplier in the given circumstances is 16.

The Tribunal has deducted 1/3rd for personal expenses of the deceased. The application for compensation was filed by the widow, two minor children and parents of deceased-Rajinder Singh. Under the circumstances, admissible deduction for personal expenses in the light of ratio in ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77,*** would be 1/4th.

In view of the above, loss of dependency comes to **Rs.7,77,600.00** (3,600 x 12 x 16 (6,91,200) + 3,45,600.00 (50% of future prospectus) – 2,59,200 (1/4th deduction).

Under the conventional heads, the claimants shall be entitled to following compensation:-

Loss of consortium to widow	30,000.00
Expenses on funeral	10,000.00
Loss of estate	10,000.00

Total compensation comes to Rs.8,27,600.00 (7,77,600 + 50,000) and the additional amount is Rs.6,42,800.00 (8,27,600 - 1,84,800) which shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to widow of the deceased.

The cross objections are partly allowed in the aforesaid terms.

Photocopy of the order be placed on the file of connected case.

(Rekha Mittal)
Judge

06.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No