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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 18.08.2017

1. FAO-810-2000

Bansi Lal

... Appellant(s)

Versus

Tulsi Ram and another

... Respondent(s)

2. FAO-1119-2000

Tulsi Ram

... Appellant(s)

Versus

Bansi Lal and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arjun Lakhanpal Advocate
for the appellant in FAO-810-2000 and
for the respondent(s) in FAO-1119-2000.

Mr. Vivek Khatri, Advocate
for the appellant in FAO-1119-2000 and
for respondent No.1 in FAO-810-2000.

Mr. Vinod Chaudhri, Advocate
for respondent No.2/Insurance Company in FAO-810-2000.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **FAO No.810 of 2000** titled as **“Bansi Lal V/s Tulsi Ram and another”** filed at the instance of the appellant-Driver and **FAO No.1119 of 2000** titled as **“Tulsi Ram V/s Bansi Lal and others”** filed at the instance of the appellant-claimant, against the findings rendered by the Motor Accident Claims Tribunal, Hisar (in short 'the Tribunal').

The facts which emanate from the order of the Tribunal are that on 03.06.1998 at about 11/11.30 a.m., the claimant along with Krishan Kumar, Bagrwat and Banwari while walking on *kacha* portion of the road on Adampur Bhattu Kalan, was hit by a jeep bearing Registration No.DL-2CE-2666, as a result of the same, the claimant sustained injury. As per the medical record (Ex.P-4), the claimant had received a fracture on ribs, right fibula and dislocation of left toe. He was at the time of accident 40 years' old and his profession was an agriculturist.

Learned counsel for the claimant submits that the Tribunal has awarded the compensation of ₹ 32,448/- by taking into consideration the medical bills of ₹ 12,448/- and ₹ 20,000/- on account of pain and suffering, special diet, transporatation and attendant charges etc. An amount of compensation of ₹ 20,000/- under the head of pain and suffering is to meagre, thus, urges this Court for enhancement of the same.

As regards the plea of driver of absolving the Insurance Company from the liability, it has been submitted that as per the registration certificate, the seating capacity of the vehicle though was 10, but unladen weight was 3590 kgs and as per the definition of LMV as enshrined under sub-Section 21 of Section 2 of the Motor Vehicles Act, "Light Motor Vehicle" means a transport vehicle the unladen weight of which does not exceed 7,500kgs. The driving licence, which the driver possessed was for LMV, but having not appreciated such aspects, the Tribunal has committed illegality and perversity in exonerating the Insurance Company/respondent No.2 from indemnification.

Mr. Vinod Chaudhri, learned counsel appearing on behalf of the New India Insurance Company Ltd./respondent No.2, submits that the

Driver was having a driving licence of Motor-cycle, Scooter, Car, Jeep and Tractor, therefore, the aforementioned class of vehicle would not fall under the definition of LMV, rightly so, the Insurance Company has been exonerated from indemnification, thus, urges this Court for dismissal of the appeals.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submission of the learned counsel representing the claimant and as well as the driver. While dealing with the contentions of the Driver, I am of the view that the driving licence (Ex.R-1) brought on record, no doubt, is valid for driving Motor-cycle, Scooter, Car, Jeep and Tractor. As per Ex.R-2, the certificate of registration, the jeep owned by Devi Lal was having seating capacity of 10, with unladen weight of 3590 kgs.

In order to appreciate the aforementioned controversy as to whether the aforementioned driving licence would fall within the definition of LMV as enshrined under sub-Section 21 of Section 2 of the Motor Vehicles Act, it would be apt to reproduce the aforementioned provisions, which reads as under:-

"(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms."

The Government of India had caused a notification dated 14.11.1994, bringing the aforementioned class of vehicles under the definition of LMV. In view of such fact, a person having driving licence of Motor-cycle, Scooter, Car, Jeep and Tractor, would be entitled to drive jeep as the description of vehicle in the registration was shown as LMV. Since

the unladen weight was 3590 kgs., therefore, the jeep would be considered to be a LMV and transport vehicle. The observations/findings of the Tribunal, in my view, are not sustainable in the eyes of law and the same are hereby set aside and only the Insurance Company would be responsible being an indemnifier.

While dealing with the contentions of the appellant/claimant, I am of the view that the claimant had suffered the aforementioned injuries and the compensation under the head of pain and suffering to the extent of ₹ 20,000/- is less, much less, as it does not commensurate with the injuries and resultantly, I increase the compensation under the head of pain and suffering as ₹ 50,000/- and in all, the claimant would be entitled to ₹ 82,448/-.

The total compensation payable shall be ₹ 82,448/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% from the date of filing of the appeal till the date of realization. The Insurance Company is directed to deposited the amount within a period of two months from the date of the receipt of the certified copy of this order, failing which, it entails the interest @ 9%.

Resultantly, the appeals are allowed and the award is modified to the aforementioned extent.

18.08.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**