IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 14.9.2017

1. **FAO No.2913 of 1999(O&M)**

Smt. Kiran Devi and others …..Appellants

VERSUS

Suresh @ Ghabbu and others .....Respondents

Present: Mr. R.S. Mamli, Advocate for the appellants.

Respondent No.1 ex parte.

Mr. A.K. Singal, Advocate for respondent No.2.

Mr. Sanjiv Pabbi, Advocate and
Mr. Suman Jain, Advocate for respondent No.3.

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2. **FAO No.2729 of 1999(O&M)**

Balbir Singh and another …..Appellants

VERSUS

Kiran Devi and others .....Respondents

Present: Mr. A.K. Singal, Advocate for the appellants.

Mr. R.S. Mamli, Advocate for respondent No.1 to 4.

Mr. Sanjiv Pabbi, Advocate and
Mr. Suman Jain, Advocate for respondent No.5.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order shall dispose of FAO No.2729 and 2913 of 1999 as these have emerged out of the same award dated 06.09.1999 passed by the Motor Accidents Claims Tribunal, Narnaul (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Rohtash Kumar in a motor vehicular accident that took place on 02.02.1998.

The Tribunal assessed income of the deceased at Rs.1500/- per month, deducted 1/3rd for personal expenses and applied a multiplier of 16 to compute loss of dependency at Rs.1,92,000/-. Another sum of Rs.10,000/- has been awarded for expenses on treatment, transportation and last rites making total compensation to Rs.2,02,000/-, payable with interest at the rate of 12% per annum from the date of petition till realization.

FAO No.2729 of 1999 has been preferred by Balbir Singh owner of the offending vehicle i.e. Mini bus No.RJ-02P-0818 whereas FAO No.2913 of 1999 has been preferred by the claimants seeking enhancement of compensation.

The parties shall be referred to as the claimants, the appellant and the Insurance Company, for facility of reference.

FAO No.2729 of 1999

The insured/owner of offending vehicle has preferred the appeal to assail findings of the Tribunal on issue No.5 decided jointly with issue No.2 whereby it has been held that Suresh @ Ghabbu, driver of the offending vehicle was possessing the driving licence of ‘heavy goods vehicle’ but was driving a mini bus carrying passengers which is a different class of vehicle. Further held that more efficiency and capacity is required to drive passengers’ vehicle than a goods vehicle and the licence has to have an endorsement enabling the driver to drive a bus carrying passengers. As the driver had no endorsement on his driving licence to drive “passenger vehicle” he was not holding a valid driving licence and the insurance company was absolved from its liability to pay compensation and compensation was held to be payable by driver and owner jointly and severally.

Counsel for the appellant would contend that the occurrence in question took place on 02.02.1998. The Motor Vehicles Act, 1988 (in short 'the Act') was amended in the year 1994 and by way of amendment of Section 10 of the Act, the vehicles described at clauses (e) to (h) namely (e) medium goods vehicle; (f) medium passenger motor vehicle; (g) heavy goods vehicle; and (h) heavy passenger motor vehicle in Section 10 were later classified as transport vehicle. It is further argued that after amendment of Section 10 in the year 1994, a driver holding a driving licence with endorsement of 'transport vehicle' is competent to drive medium goods vehicle; medium passenger motor vehicle; heavy goods vehicle and heavy passenger motor vehicle now classified as 'transport vehicle'. According to counsel, since driver of the offending vehicle was holding a driving licence to drive heavy goods vehicle now categorized as 'transport vehicle', he cannot be held incompetent to drive another transport vehicle namely "heavy passenger motor vehicle". Another submission made by counsel is that there is not much difference between "heavy goods vehicle" and "heavy passenger motor vehicle" so far as their body-weight is concerned. Thus, the driver of the offending vehicle, in no terms, can be said to be incompetent to drive the vehicle in question on the basis of driving licence of "heavy goods vehicle" possessed by him at the time of occurrence.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on the premise that as driver of offending vehicle was not holding a licence to drive a passenger vehicle, he rendered himself incompetent to drive the vehicle in question creating a valid defence in favour of the insurance company under Section 149(2) of the Act, sufficient to exonerate the insurance company of its liability to pay compensation.

Counsel representing the claimants has supported the arguments advanced by counsel for the appellant/owner of the vehicle.

Be that as it may, it is undisputed position of the case that the occurrence in question took place on 02.02.1998. Prior to amendment of Section 10 of the Act dealing with form and contents of licence to drive, in sub-section (2) of Section 10 of the Act, the medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle were classified separately for the purpose of entitling the holder of learner's licence or the driving licence to drive a motor vehicle of one or more of the following classes i.e. (a) motor cycle without gear; (b) motor cycle with gear ; (c) invalid carriage ; (d) light motor vehicle ; (e) medium goods vehicle; (f) medium passenger motor vehicle (g) heavy goods vehicle; (h) heavy passenger motor vehicle; (i) road roller; (j) motor vehicle of a specific description, meaning thereby that if a person was holding a driving licence to drive a heavy goods vehicle that licence was not sufficient to entitle him to drive a "heavy passenger motor vehicle" or "medium passenger motor vehicle". However, legislature in its wisdom made amendment in sub-Section (2) of Section 10 of the Act whereby the classification between medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle was done away with and all these vehicles have been classified as 'transport vehicle'. A driver possessing a driving licence with endorsement of 'transport vehicle' is now legally competent to drive a medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle as against the situation prior to amendment of Section 10 of the Act in the year 1994. Once the legislature in its wisdom has thought that there is no need to classify these four categories of vehicles separately or they can be classified together as transport vehicle, I find merit in contention of counsel for the appellant that a driver possessing licence to drive a "heavy goods vehicle" is entitled to drive a "heavy passenger motor vehicle" or "medium passenger motor vehicle". In this view of the matter, findings recorded by the Tribunal that driver of the offending vehicle was not possessing a valid driving licence or the insurance company is entitled to be exonerated of its liability to pay compensation cannot be allowed to sustain and accordingly set aside. I would hasten to add that though in the instant case, occurrence in question took place in the year 1998 and the award was passed on 06.09.1999, the Tribunal did not appreciate the provisions of Section 10 in the light of what Section 10 was before its amendment in the year 1994 and what is the effect of amendment of Section 10(2) of the Act in 1994.

For the foregoing reasons, the appeal filed by the appellant is partly allowed. Resultantly, findings recorded by the Tribunal upholding plea of the insurance company that driver of the offending vehicle was not possessing a valid driving licence and the insurance company is entitled to be exonerated of its liability to pay compensation are ordered to be set aside. As a natural corollary, the driver, owner/insured and insurance company become jointly and severally liable to pay compensation to the claimants as the insurance company has an obligation in law to indemnify the insured and the insured is vicariously liable for the act of his driver in driving the vehicle in a rash and negligent manner.

FAO No.2913 of 1999

Counsel for the claimants has submitted that the Tribunal has not awarded benefit of increase in income for future prospects. The deceased left behind his widow and three minor children, held to be dependent upon his income, therefore, admissible deduction should be 1/4th and not 1/3rd. Compensation awarded under conventional heads needs enhancement in the light of judgments of Hon'ble the Supreme Court **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** and **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945.**

Counsel representing the appellant and the insurance company have supported the award with the submission that adequate compensation has been assessed by the Tribunal.

The Tribunal has held that the deceased was 40 years old at the time of death. For this purpose, the Tribunal has relied upon testimony of Kiran Devi PW-2, widow of the deceased, copy of MLR Ex.P1, X-ray report Ex.P2 and postmortem report Ex.P4 that show age of Rohtash Kumar being recorded as 40 years. There is no clear evidence on record with regard to date of birth of the deceased. In the application for compensation, there is no reference to age of Kiran Devi or three children, two daughters and one son stated to be minor. Even it is not clear on record as to on whose behalf age of the deceased was recorded in medical documents i.e. MLR, x-ray report and postmortem report, however, the insurance company has not preferred an appeal to assail findings of the Tribunal holding that Rohtash Kumar was aged 40 years at the time of death. Under the circumstances, admissible multiplier for loss of dependency would be 15 in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** . The claimants shall be entitled to increase in income for future prospects to the extent of 30%. The Tribunal has deducted 1/3rd income for personal and living expenses of the deceased. As has been noticed hereinbefore, the deceased left behind his widow and three minor children, thus, admissible deduction is 1/4th. In this manner, loss of dependency comes to Rs.2,63,250/- [Rs.2,70,000/- (Rs.1,500/- x 12 x 15) + Rs.81,000/- (30% future prospects) – Rs.87,750/- (1/4th deduction towards personal expenses).

The occurrence in question took place in February 1998 and a period of about two decades has elapsed in between. There is change in price index in the intervening period. When examined in view of the judgments relied upon by counsel for the claimants, the claimants shall be entitled to following compensation under conventional heads:-

1. Loss of consortium to the widow	Rs.50,000/-
2. Loss of love and affection to minor children	Rs.1,20,000/- (to be shared equally)
3. Loss of estate	Rs.10,000/-

The compensation awarded by the Tribunal for expenses on treatment, transportation and last rites Rs.10,000/- is ordered to be affirmed.

In view of the above, total compensation comes to Rs.4,53,250/- and the additional compensation is Rs.2,51,250/- (Rs.4,53,250/- - Rs.2,02,000/-). The additional amount shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization to be shared by the claimants in the ratio determined by the Tribunal. The amount falling to share of the children shall be deposited in Fixed Deposit Receipts for a period of three years.

The appeal is partly allowed in the aforesaid terms.

SEPTEMBER 14, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no