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

**Date of decision: 18.08.2017**

**FAO No.1296 of 2004 (O&M)**

Jabuni & others ...Appellants

Vs.

Ahsan & others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Ms. Jagriti Kalia, Advocate, for
Mr. Manoj Bajaj, Advocate, for the appellants.

Mr. Manoj Kaushik, Advocate, for respondent No.2.

Mr. Vinod Chaudhary, Advocate, for respondent No.3.

**RAJIV NARAIN RAINA, J.**

Abdul Hamid died in a motor accident while travelling with others in Jeep bearing registration No.HR51-7586. The driver, namely, Ahsan was at a high speed and lost control of the vehicle as a result of which the Jeep over turned while near Village Hirmithla in Haryana. Injured persons including Abdul Hamid were shifted to the nearest Community Health Centre, where Abdul Hamid was declared dead. The post-mortem report confirmed death by grievous injuries suffered in the accident on 08.07.1999. A claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by the claimants i.e. the present appellants and the mother of the deceased as party.

Similarly, another traveler, namely, Zakir, who also suffered injuries in the same accident, filed a separate claim petition for compensation of Rs.7.5 lakhs. We are not concerned with the case of Zakir in this appeal.

On notice, the driver and owner of the offending vehicle put in appearance, but thereafter were proceeded against ex parte on 06.06.2000, when the case was fixed for filing written statement. The offending vehicle was insured with respondent No.3 – United India Insurance Company, Sohna, District Gurgaon.

After hearing both the parties and going through the entire evidence collected, the learned Tribunal, while deciding the issue of rash and negligent driving by Ahsan was of the view that the very fact that the jeep had turned turtle while plying on the road without hitting another vehicle was a manifestation of rash and negligent driving on the part of the driver. A criminal case was registered against the driver and after investigation challans was presented before the Judicial Magistrate and trial commenced. The driver was not produced as a witness in the claim case. Even if he had, he would never have admitted his fault. Accordingly, the issue was decided in favour of the claimants. The fact that the accident took place was not disputed or that Abdul Hamid was not travelling in the Jeep on the ill-fated day.

The Tribunal vide award dated 28.01.2003 allowed both the claim petitions filed by Zakir, injured and of the claimants of deceased Abdul Hamid. However, at this stage, we are not concerned with the case of Zakir, as said before.

Regarding Abdul Hamid, no documentary evidence was produced to prove the monthly income as claimed in the petition. The statement made by the widow Jabuni while appearing as PW-2 is to the effect that deceased was a Milk Vendor and used to spare Rs.3,500/- per month for his family. Since no corroboration came from any sector whatsoever on the version that the deceased was a Milk Vendor, the Tribunal considered the income equivalent to the wages payable to the labourer and assessed it at Rs.2100/- per month current then as per DC rates.

The Tribunal applied the multiplier of 17, as Abdul Hamid-deceased was 30 years of age at the time of his death. On calculation, the amount payable to the claimants under the head of dependency on deceased worked out to Rs.2,85,600/-. In addition, the Tribunal awarded Rs.10,000/- on account of loss of consortium and Rs.5000/- as funeral expenses. Accordingly, the total compensation package was assessed at Rs.3,00,600/-. The Insurance Company, the driver and the owner of the jeep were made liable to compensation jointly and severally.

The Insurance Company raised a dispute that the jeep was being used as a taxi and therefore it was not liable to pay any compensation as per policy, when it was insured only as a private vehicle. Moreover, the person driving the offending jeep held a learner's license and was not accompanied by a regular licensed driver at the time of accident as required by Rule 3 of the Central Motor Vehicles Rules, 1989.

The first plea was rejected by the Tribunal since it was not an issue raised in the written statement by the Insurance Company that offending jeep was used as a taxi and, therefore, the argument was held rightly to be beyond pleadings. On the second objection, the Tribunal held that there was no evidence that the offending jeep was being plied as a taxi at the relevant time. It also came in evidence that 7 to 8 persons were travelling in the jeep, when it turned turtle, but there was no evidence to indicate that those persons were hired passengers. On the other hand, PW-1 Mst. Naushaba Ali, who was a co-passenger, and claimed in his deposition that the driver was known to her and she paid no fare for travelling in the jeep. The only other person, who was travelling in the jeep at the relevant time and had appeared as witness is PW-3 Zakir, the injured claimant. The offending jeep was found to be the personal property of respondent No.2 and that it was being driven to Sohna on the fateful day for repair by the respondent No. 2. The Tribunal found no scope in the evidence to conclude that the jeep was used as a taxi on the day of the accident. I have no reason to differ.

The Tribunal accepted the plea that the driver held a learner's license, but he was authorized to drive a jeep. To satisfy Rule 3, it was obligatory on the part of the driver and the owner of the offending jeep to prove that the driver was accompanied by a regular licensed driver at the time when he was driving the offending vehicle. Though the Tribunal found merit in the contention of the insurance company that respondents No.1 & 2 had contravened the terms and conditions of insurance policy by non-observance of the provisions of Rule 3 but still, and either way, the liability to pay compensation to the claimants does not get absolved and the Tribunal applied the law in New India Assurance Company Vs. Kamla, 2001 (1) PLR 830 for this, where the Supreme Court considered the provisions of Sections 149(4) and 149(5) of the Act. To wit, the Tribunal relied on the following observations of the Supreme Court in the case:

> "A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third party only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy."

For these reasons, the Tribunal held the insurer liable to pay compensation with the right to recover amount from the insured due to violation of the terms and conditions of the insurance policy.

On a consideration of the matter, I have no reason to differ with the reasoning given by the Tribunal in its award dated 28.01.2003.

As far as compensation awarded to the claimants under different heads is concerned, I have heard learned counsel for the parties at length.

Coming to the income assessed by the Tribunal, no evidence has come as to the occupation of the deceased and the Tribunal may not have erred in applying the minimum wages then available, which were Rs.2100/- per month. There also appears to be no error in applying a deduction of Rs.700/- towards personal expenses, leaving Rs.1400/- per month surplus for the welfare of the family. However, the Tribunal has not awarded any amount for future prospects and that aspect deservedly requires to be introduced by 30% being a non-salaried person. By applying this percentage, the amount of future prospects works out to Rs.2730/- (Rs.2100 + Rs.630). Thus, by deducting the personal expenses of the deceased to the extent of 1/3rd as adopted by the Tribunal and by applying multiplier of 17, the amount comes to Rs.3,71,280/-.

In Rajesh Vs. Rajbir Singh, (2013) 9 SCC 54, the Supreme Court has guided that compensation principles out to be periodically revisited as was enunciated earlier by the Supreme Court in Santosh Devi Vs. National Insurance Co. Ltd., (2012) 6 SCC 421. It is this guidance that strikes this Court to bring the award in tune with the times. If the four minor children are major today, even major children are entitled to compensation for loss of love and affection of a father. In our society, the Court observed, the father enjoys a unique position. Even children, who have attained majority, ever seek guidance and advice of the father for all important matters in life. This view expressed by this Court has also to be kept in mind while considering a case of enhancement of compensation, which is found just, equitable, reasonable and adequate today. As a matter of fact, no amount of money can actually compensate loss of human life of those left behind to mourn. The effort of the Court is only to strike a just balance between over compensation and under-compensation and this can best be left to the wisdom of the Court gained by experience and the realities of life living in the community. Thus, all the children are held entitled to Rs.1,00,000/- each under the head 'loss of care and guidance'.

In my considered view, the compensation awarded for loss of consortium to the tune of Rs.10,000/- deserves to be increased to Rs.1,00,000/- as is available today by weight of precedents. However, the compensation as far as funeral expenses is concerned, I am of the view that accident having taken place in the year 1999, the funeral expenses awarded at the rate of Rs.5000/- deserve to be maintained, as the expenditure was one time and incurred almost two decades ago and it would not be justified to increase the same to Rs.25,000/-. Accordingly, the award is maintained as far as this head is concerned. I will also award Rs.50,000/- towards loss of estate, as nothing has been given by the Tribunal under this conventional head.

In view of the above, the instant appeal is partly allowed to the extent indicated in the tabulated below:

| **Sr.No.** | **Heads of Claim** | **Tribunal** | **High Court** |
|---|---|---|---|
| 1. | Income | Rs.2100 p.m. | Rs.2100/- p.m. |
| 2. | 30% of (1) above to be added as future prospects | -- | (2100+630)= 2730 |
| 3. | 1/3rd of (2) deducted as personal expenses of the deceased | (2100-700)= Rs.1400/- p.m. | (2730-910)= Rs.1820/- p.m. |
| 4. | Compensation after multiplier of 17 | (1400x12x17) = Rs.2,85,600/- | (1820x12x17) = Rs.3,71,280/- |
| 5. | Loss of care and guidance for children (loss of love and affection) | -- | (1,00,000x4) = Rs.4,00,000/- |
| 6. | Loss of Estate | -- | Rs.50,000/- |
| 7. | Loss of consortium | Rs.10,000/- | Rs.1,00,000/- |
| 8. | Funeral Expenses | Rs.5000/- | Rs.5000/- |
| 9. | Total compensation | Rs.3,00,600/- | Rs.9,26,280/- |

The amount for compensation payable shall be Rs.9,26,280/-.

The amount in excess of what has already been provided by the Tribunal shall also attract interest @ 6% per annum, but from the date of filing of the present appeal [and not the claim application] till the date of realization to arrive at a golden mean by balancing out the competing rights of the parties.

**18.08.2017** **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

*Whether speaking/reasoned:* *Yes*
*Whether Reportable:* *No*