

**X Obj No.15-CII of 2002 and
FAO No.1384 of 2001**

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

**X Obj No.15-CII of 2002 and
FAO No.1384 of 2001
Date of Decision.10.11.2017**

The Oriental Insurance Co. Ltd.

.....Appellant

Vs

Smt. Anita Chawla and others

.....Respondents

Present: Mr. Neeraj Khanna, Advocate for
Mr. Navin Kapur, Advocate
for the appellant.

Mr. Vinod Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for respondent Nos.1 to 4/cross objectors.

Mr. Nihul Pratap Singh, Advocate for
Mr. Deepender Singh, Advocate
for respondent No.5.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of one appeal bearing No.1384 of 2001 filed at the instance of the insurance company and the cross objection bearing No.15-CII of 2002 at the instance of the claimant challenging the common award whereby the liability to pay compensation has been fastened upon the insurance company whereas the claimants have sought enhancement of the compensation on the premise that the income for the shop to the tune of ₹60,000-70,000/- per annum has not been taken into consideration.

Mr. Neeraj Khanna for Mr. Navin Kapur, learned counsel appearing on behalf of the insurance company submits that the driving licence Ex.R3 issued on 23.02.1996 valid upto 3.4.2023 authorized the

driver to drive motor cycle/scooter/car/jeep/ tractor whereas the vehicle in question bearing registration No.PB-03D-4432 was a Trax and therefore, would not be a Light Motor Vehicle, thus, the driver was not entitled to drive the Trax as a Light Motor Vehicle. In other words, the driving licence did not have endorsement of Light Motor Vehicle. There was a breach of terms and conditions of the insurance policy and this aspect has not been taken care by the Tribunal in not exonerating the insurance company, hence the present appeal. In support of his arguments, he also referred to definition of Light Motor Vehicle under Section 2(21) of the Motor Vehicles Act.

On the contrary, learned counsel appearing on behalf of the cross objectors/claimants opposed the appeal preferred by the insurance company on the premise that in view of ratio decidendi culled out by Hon'ble Supreme Court in **Mukund Dewangan Vs. Oriental Insurance Co. Ltd. (2016) 4 SCC 298**, all the vehicles having the endorsement of car/jeep etc. had fallen under the expression 'LMV' and therefore, Trax having unladen weight of less than 7500 kg is equivalent to jeep meaning thereby falls under the category of LMV, therefore, it does not lie in the mouth of the insurance company to urge and challenge that the driver did not have an effective and valid driving licence to drive the vehicle in question.

As regards the enhancement of compensation, he submits that the deceased was having income from agricultural land. Though the land remained with the legal representatives of the deceased but the Tribunal took the income of the deceased from the land as ₹1,20,000/- per annum and after making a deduction towards personal expenses, took the loss of dependency as ₹90,000/- per annum whereas he was also running a cloth

shop, income from which was to the tune of ₹60,000/- to ₹70,000/- per annum which had not been taken care of. The deceased at the time of accident was aged 35/36 years. No amount of compensation towards loss of love and affection, loss of consortium, much less, future prospects had been provided. In support of his contention, he relies upon the ratio decidendi culled out by Constitution Bench of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and another** passed in Special Leave Petition (Civil) No.25590 of 2014 on 31.10.2017.

The aforementioned contention had been refuted by the counsel appearing on behalf of the insurance company on the premise that income from the cloth shop cannot be taken into consideration for want of evidence and rightly so, has been rejected by the Tribunal, thus, urges this Court for setting aside the award on the issue of liability and upholding the amount of compensation as there is no scope for further enhancement.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit in the submissions of learned counsel representing the insurance company, for, it is settled law that defences which the insurance company can take, have been enumerated under sub-section 2 of Section 149 of the Motor Vehicles Act. Driving a vehicle without holding an effective driving licence at the time of accident is also one of defences. Ex.R3, driving licence had endorsement as noticed above whereas the ratio decidendi culled out by Hon'ble Supreme Court in **Mukund Dewangan's case** (supra) had brought all the vehicles having unladen weight upto 7500 kg within the ambit of LMV. If a person has to apply for a licence to drive car, jeep, tractor etc., the Licencing Authority

vehicle having unladen weight upto 7500 kg. Trax is also equivalent to jeep, rightly so, being considered as LMV by the Tribunal, therefore, the driving licence, in my view, cannot be stated to be ineffective or invalid at the time of accident. There is no contrary evidence produced on record that it was a fake one or had not been issued by the concerned Licencing Authority.

As far as the amount of compensation, viz-a-viz the business of cloth is concerned, no direct or cogent evidence had been led to establish the income, rightly so, adverse inference had been drawn, which is a correct approach.

Owing to the divergent views rendered by the Hon'ble Supreme Court with regard to future prospects, the matter was referred to the larger Bench and the Constitution Bench of Hon'ble Supreme Court in **Pranay Sethi's case** (supra) in paragraph 61 has made following analysis:-

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made.

The addition should be 30%, if the age of the deceased was 48 between 40

to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

In view of the aforementioned judgment, I am of the view that the claimants are not entitled to loss of love and affection but would be entitled to future prospects as the deceased was self-employed and having a fixed income from agricultural land. Being aged 35 years, there would be increase of 40% towards future prospects. I will take the income of the deceased as ₹1,20,00/- per annum, make an increase of 40% towards future prospects, apply a deduction of 1/4th towards personal expenses and adopt a

the time of his death as per post-mortem report to assess loss of dependency as ₹20,16,000/-. I will further add to it ₹15,000/- for loss of estate, Rs.₹15,000/- for funeral expenses and ₹40,000/- for loss of consortium.

In all, the compensation payable shall be ₹20,86,000/-. The amount in excess of what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The enhanced amount shall be distributed between the claimants in the ratio of 2:2:2:1. The liability shall remain the same as has already been provided by the Tribunal.

The award passed by the Tribunal is modified to the above extent. Resultantly, the appeal filed by the insurance company is dismissed and the cross objection filed by the claimants is allowed.

**(AMIT RAWAL)
JUDGE**

November 10, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes